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RICHARD F. GOODSON
R. DANIEL BOWEN JEREMY P. PISCA
COMMISSIONERS

MAX M. SHEILS, JR.
EXECUTIVE SECRETARY

CONSTITUTIONS, FEDERAL LAWS, HISTORICAL DOCUMENTS, TABLES

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
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Federal Reporter, 3rd Series
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

CONSTITUTION OF THE STATE OF IDAHO

Article I

DECLARATION OF RIGHTS

§ 1. Inalienable rights of man.

Analysis

Constitutionality.
Sale of intoxicating liquor.
Workers' compensation.

Constitutionality.

The immunity provision found at former § 22-4803A(6) [now see §§ 39-114 and 52-108] does not effect a taking in violation of the Fifth Amendment of the United States Constitution or Idaho Const. art. I, § 14. It also does not violate this section or the prohibition against local or special laws found in Idaho Const. art. III, § 19. The statute is constitutional. Moon v. N. Idaho Farmers Ass'n, 140 Idaho 536, 96 P.3d 637 (2004), cert. denied, 543 U.S. 1146, 125 S. Ct. 1299, 161 L. Ed. 2d 106 (2005).

House Bill 403 of the 2003 Idaho legislative session, as it amended § 6-2214, violated this section because it gave the judiciary the power to tax by providing that the district court would impose an educational necessity levy on local school districts if necessary. Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004).

Sale of Intoxicating Liquor.

Section 23-808(4)(b) does not violate the equal protection guarantees of the United States or Idaho Constitutions because there are conceivable facts that would support the legislative classification under the rational basis test. Mc Lean v. Maverik Country Stores, Inc., 142 Idaho 810, 135 P.3d 756 (2006).

Workers' Compensation.

Denial of an employee's claim for psychological reaction, without an accompanying physical injury, did not violate her rights under Idaho Const. art. 1, §§ 2 and 18. Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P.3d 448 (2004).

Collateral References. Federal and state constitutional provisions and state statutes as prohibiting employment discrimination based on heterosexual conduct or relationship. 123 A.L.R.5th 411.

§ 2. Political power inherent in the people.

Analysis

Equal rights and equal protection.
Worker's compensation.

Equal Rights and Equal Protection.

There is at a minimum, a rational basis for § 72-223's grant of immunity because the quid pro quo under the Idaho Worker's Compensation Act still exists; the fact that the primary employer may keep § 72-223's grant of immunity even though the direct employer has paid benefits and fulfilled its obligations under the law does not render the section unconstitutional. Venters v. Sorrento Del., Inc., 141 Idaho 245, 108 P.3d 392 (2005).

Equal protection claim was improperly dismissed in a dispute regarding an alleged regulatory taking because the elements of a "class of one" claim were not analyzed. The fact that this claim was previously determined when a corporation was not a party to the action was no basis for the decision since

no res judicata or collateral estoppel arguments were raised. City of Coeur d'Alene v. Simpson, 142 Idaho 839, 136 P.3d 310 (2006).

Requirement that an employee suffering an accident had to timely notify the employer, even if that employee was unaware of the extent of the personal injury caused by the accident, did not violate the equal protection clause of this section because the statute applied to all persons and subject matters in a like situation. Arel v. T & L Enters., 146 Idaho 29, 189 P.3d 1149 (2008).

Worker's Compensation.

Denial of an employee's claim for psychological reaction, without an accompanying physical injury, did not violate her rights under Idaho Const., Art. I, § 18 and this section. Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P.3d 448 (2004).

Rational basis exists for the grant of immunity in § 72-223, even if the statutory employer has not had to pay benefits because the direct employer has. Kolar v. Cassia County Idaho, 142 Idaho 346, 127 P.3d 962 (2005).

Collateral References. Federal and state constitutional provisions and state statutes as prohibiting employment discrimination based on heterosexual conduct or relationship. 123 A.L.R.5th 411.

Application of class-of-one theory of equal protection to public employment. 32 A.L.R.6th 457.

Construction and application of constitutional rule of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986) — United States supreme court cases. 8 A.L.R. Fed. 2d 547.

§ 4. Guaranty of religious liberty.

Analysis

Controlled substances.
Prisoners.

Controlled Substances.

This section does not protect against prosecution for conduct that violates a neutral criminal statute of general applicability, such as possession of marijuana with the intent to deliver, simply because such conduct may be engaged in for religious reasons. State v. Fluewelling, 150 Idaho 576, 249 P.3d 375 (2011).

Prisoners.

By prohibiting the government from imposing any substantial burden on an inmate's religious exercise unless the burden is justified by a compelling, and not just a legitimate, governmental interest, the Religious Exercises in Land Use and by Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, accords greater protection to an inmate than the Free Exercise Clause of both the Idaho and federal constitutions. Hyde v. Fisher, 146 Idaho 782, 203 P.3d 712 (Ct. App. 2009).

Collateral References. Landlord's refusal to rent to unmarried couple as protected by landlord's religious beliefs. 10 A.L.R.6th 513.

Wearing of religious symbols in courtroom as protected by first amendment. 18 A.L.R.6th 775.

State constitutional challenges to the display of religious symbols on public property. 26 A.L.R.6th 145.

Constitutionality of legislative prayer practices. 30 A.L.R.6th 459.

Application of first amendment's "ministerial exception" or "ecclesiastical exception" to state civil rights claims. 53 A.L.R.6th 569.

Prohibition of federal agency's keeping of records on methods of individual exercise of first amendment rights, under Privacy Act of 1974 (5 USCS § 552a(e)(7)). 20 A.L.R. Fed. 2d 437.

§ 5. Right of habeas corpus.

Analysis

Claim for monetary compensation.
Sentencing.
—By jury.

Claim for Monetary Compensation.

Despite the district court's error in dismissing the inmate's entire petition for habeas corpus relief because it contained a claim for monetary compensation, the inmate's motion to amend was properly denied because he was not entitled to any other relief claimed. Hoots v. Craven, 146 Idaho 271, 192 P.3d 1095 (Ct. App. 2008).

Sentencing.

—By Jury.

At the time defendant was sentenced, he had no right under either the state or federal constitutions to have a jury find the existence of an aggravating circumstance; because there was no error, habeas corpus did not provide a remedy. Porter v. State, 140 Idaho 780, 102 P.3d 1099 (2004), cert. denied, 545 U.S. 1143, 125 S. Ct. 2967, 162 L. Ed. 2d 894 (2005).

§ 6. Right to bail — Cruel and unusual punishments prohibited.

Analysis

Cruel and unusual punishment.
Habeas corpus.
—Standard of review.
Length of sentence.
Sentence of juvenile.
Sex offender registration.

Cruel and Unusual Punishment.

Appellate court conducted a proportionality analysis comparing the sentence to those imposed on other defendants for similar offenses, and the burden of demonstrating that a sentence was cruel and unusual was on the person asserting the constitutional violation; therefore, defendant had not shown an inference of gross disproportionality, including the additional time he spent in custody due to the forfeiture of the 314 days, such that defendant failed to demonstrate that his sentences constituted cruel and unusual punishment. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

Defendant's sentences after being convicted of three counts of the attempted procurement of prostitution and two counts of the procurement of prostitution were proper because she was sentenced to a determinate term of two years to run concurrently with eight years indeterminate on each conviction of procurement of prostitution. That was not a grossly disproportionate sentence on the facts in the case and did not shock the conscience of reasonable people. State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Unified life sentence with a 60-year minimum term after defendant was convicted of second-degree murder was appropriate because the offense was very grave and the sentence imposed was not grossly disproportionate to the crime and did not shock the conscience of reasonable people. Additionally, there was no provocation or threat coming from the victim and continuous rehabilitative efforts in the juvenile justice system had proven ineffective for defendant in the past. State v. Wright, 147 Idaho 150, 206 P.3d 856 (Ct. App. 2009).

Habeas Corpus.

Dismissal of the petitioner's writ of habeas corpus petition was proper, because the petitioner was not prejudiced by the disallowance of cross-examination at the dispositional hearing, when both of the witnesses who testified at the dispositional hearing had previously testified at the factual parole violation hearing before the hearing officer, at which time the petitioner was afforded the opportunity to cross-examine them. Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

—Standard of Review.

The essence of habeas corpus is an attack upon the legality of a person's detention for the purpose of securing release where custody is illegal. It may be used to challenge the revocation of parole or the violation of a parolee's constitutional rights during the course of parole revocation proceedings. Matthews v. Jones, 147 Idaho 224, 207 P.3d 200 (Ct. App. 2009).

Length of Sentence.

A challenge to the length of a sentence on cruel and unusual punishment grounds in post-conviction proceedings is barred by the doctrine of res judicata when the applicant argued on direct appeal that the sentence was excessive under state law reasonableness standards. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Sentence of Juvenile.

Defendant's fixed-life sentence for first-degree murder, which was committed when defendant was 16 years old, was not cruel and unusual: defendant failed to show that there was a national consensus against fixed life sentences for juveniles convicted of homicide crimes. State v. Draper, 151 Idaho 576, 261 P.3d 853 (2011).

Sex Offender Registration.

Sex offender registration requirement does not constitute cruel and unusual punishment in violation of the constitutions of the State of Idaho and the United States because the requirement that sexual offenders register does not impose punishment; the purpose of Idaho's registration statute is not punitive, but remedial. It provides an essential regulatory purpose that assists law enforcement and parents in protecting children and communities. State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

Collateral References. Application of constitutional rule of *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002), that execution of mentally retarded persons constitutes "cruel and unusual punishment" in violation of Eighth Amendment. 122 A.L.R.5th 145.

When does forfeiture of real property violate excessive fines clause of Eighth Amendment or state constitutions — State cases. 124 A.L.R.5th 509.

Constitutional right of prisoners to abortion services and facilities. 28 A.L.R.6th 485.

§ 7. Right to trial by jury.

Cited in: State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005).

ANALYSIS

Death sentence.
Eminent domain.
Jury instructions.
Sale of intoxicating liquor.
Selection of jurors.
Waiver of rights.

Death Sentence.

Where defendant was found guilty of murder, the appellate court declined to apply a harmless error analysis and remand the case for resentencing with directions to the trial court to exclude victim impact statements calling for the death penalty, or other information that did not comply with *Booth*, and *Payne*, in order not to violate the Eighth Amendment. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Eminent Domain.

Property owner was not entitled to a jury trial on the Ada County Highway District's ejectment claim as a suit for quiet title and ejectment was equitable in nature and, therefore, that there was no entitlement to a jury trial on the ejectment claim. Ada County Highway Dist. v. Total Success Invs., LLC, 145 Idaho 360, 179 P.3d 323 (2008).

Jury Instructions.

A trial court is required to instruct the jury that it must unanimously agree on the defendant's guilt in order to convict the defendant of a crime. An instruction that the jury must unanimously agree on the facts giving rise to the offense, however, is generally not required. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

An instruction informing the jury that it must unanimously agree on the specific occurrence giving rise to the offense is necessary, when the defendant commits several acts, each of which would independently support a conviction for the crime charged. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Sale of Intoxicating Liquor.

Because parents of a minor passenger injured in a accident caused by a drunk driver had no cause of action against a store under the prohibition of § 23-808(4)(b), their constitutional right to a jury trial was not violated. Mc Lean v. Maverik Country Stores, Inc., 142 Idaho 810, 135 P.3d 756 (2006).

Selection of Jurors.

Trial court improperly denied defendant's challenge for cause of juror who stated during voir dire that he was biased towards believing the testimony of a police officer over that of a defendant, and who could make no unequivocal assurance that he would set aside this bias and render an impartial verdict based solely on the facts of the case. State v. Hauser, 143 Idaho 603, 150 P.3d 296 (Ct. App. 2006).

Waiver of Rights.

Trial court properly denied as untimely workers' compensation policyholders' motions for a jury trial under I.R.C.P. 38(b) or 39(b) in their action against the state insurance fund; the policyholders' waiver of a jury trial was not revoked by the state's intervention in the proceeding or by an amendment of a pleading, and the policyholders gave no reason for their failure to make a timely demand. Hayden Lake Fire Prot. Dist. v. Alcorn, 141 Idaho 388, 111 P.3d 73 (2005), overruled on other grounds, Farber v. Idaho State Ins. Fund, — Idaho —, 272 P.3d 467, 2012 Ida. LEXIS 37 (2012).

§ 8. Prosecutions only by indictment or information.

Cited in: State v. Pierce, 150 Idaho 1, 244 P.3d 145 (2010); State v. Miller, 151 Idaho 828, 264 P.3d 935 (2011).

ANALYSIS

Aiding and abetting.
Grand jury or preliminary hearing.
Indictment or information.
—Amendments.
Preliminary examination.
—Waiver.
Sufficiency of information.

Aiding and Abetting.

Jury instruction on aiding and abetting did not constitute an impermissible variance or a constructive amendment of the charging document because Idaho has abolished the distinction between principals and aiders and abettors, and it is well established in Idaho that it is unnecessary to charge a defendant with aiding and abetting. State v. Johnson, 145 Idaho 970, 188 P.3d 912, cert. denied, 555 U.S. 1053, 129 S. Ct. 638, 172 L. Ed. 2d 623 (2008).

Grand Jury or Preliminary Hearing.

Where a grand jury that indicted defendant was acting without authority because its term had expired, the district court erred in denying defendant's Idaho R. Crim. P. 35 motion

for correction of an illegal sentence, and his conviction was accordingly vacated. Because the grand jury's term had expired, no valid indictment or information was returned. State v. Lute, 150 Idaho 837, 252 P.3d 1255 (2011).

Indictment or Information.

—Amendments.

Indictment charging defendant with murdering his wife by giving her an overdose of drugs her was not impermissibly amended to allege murder by overdose or suffocation because the amendment did not charge defendant with a new offense, but merely alleged an alternative way that defendant might have committed the crime. Further, the amendment did not prejudice defendant's substantial rights because it was made nearly one whole year before trial and, thus, gave defendant more than adequate time to prepare his defense relating to the allegation of murder by suffocation. The amendment did not subject defendant to double jeopardy because, if the jury had convicted or acquitted defendant under the original indictment, he could not later be tried on the amended indictment. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Defendant's conviction for sexual abuse of a child under 16 years of age was void, because the prosecuting attorney had no authority to issue an amended indictment for a crime that was not charged in the original indictment and that was not an included offense of the originally-charged crime of lewd conduct with a child under 16 years of age; the amended indictment was a nullity, as the new charge required a new indictment from the grand jury. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

Preliminary Examination.

—Waiver.

Where a complaint alleges that the defendant has committed a felony, he has a right to a preliminary hearing. The purpose of the preliminary hearing is to determine whether there is probable cause to believe that the defendant committed the felony. A defendant who waives the right to a preliminary hearing waives the right to a probable cause determination regarding the charged felony. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

Sufficiency of Information.

When four officers arrived at defendant's apartment seeking her husband, who was wanted for felony probation violations, she told them that her husband did not have a gun; when they attempted to take the husband into custody, he shot and injured three officers; the information alleging these facts was sufficient to charge defendant with harboring and protecting a felon in violation of § 18-205. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

§ 9. Freedom of speech.

Opinions of Attorney General. Provisions of local initiatives pertaining to the use of marijuana for medicinal purposes and the growth and cultivation of industrial hemp, that instruct city officers to advocate for changes to state law to support the goals and implementation of the ordinances are unconstitutional because compelling this advocacy is clearly an infringement upon the free speech rights of city officers. OAG 07-02.

Collateral References. First Amendment protection afforded to comic books, comic strips, and cartoons. 118 A.L.R.5th 213.

Construction and application of federal and state constitutional and statutory speech or debate provisions. 24 A.L.R.6th 255.

First amendment protection afforded to web site operators. 30 A.L.R.6th 299.

First amendment protection afforded to blogs and bloggers. 35 A.L.R.6th 407.

Validity of restrictions imposed during national political conventions impinging upon rights to freedom of speech and assembly under first amendment. 46 A.L.R.6th 465.

Restrictive covenants or homeowners' association regulations restricting or prohibiting flags, signage, or the like on homeowner's property as restraint on free speech. 51 A.L.R.6th 533.

Construction and application of establishment clause off first amendment — U.S. supreme court cases. 15 A.L.R. Fed. 2d 573.

§ 10. Right of assembly.

Collateral References. Validity of restrictions imposed during national political conventions impinging upon rights to freedom of speech and assembly under first amendment. 46 A.L.R.6th 465.

§ 11. Right to keep and bear arms.

Collateral References. Construction and application of United States supreme court holdings in *District of Columbia v. Heller,* 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. City of Chicago, Ill.,* 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) respecting second amendment right to keep and bear arms, to state or local laws regulating firearms or other weapons. 64 A.L.R. 6th 131.

Construction and application of United States supreme court holding in *District of Columbia v. Heller,* 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), that second amendment confers individual right to keep and bear arms to federal statutes regulating firearms and other weapons or devices. 56 A.L.R. Fed 2d 1.

§ 13. Guaranties in criminal actions and due process of law.

Cited in: Moon v. N. Idaho Farmers Ass'n, 140 Idaho 536, 96 P.3d 637 (2004); State v. Veloquio, 141 Idaho 154, 106 P.3d 480 (Ct. App. 2005).

ANALYSIS

Alcohol Concentration Test.

Although police had no duty to make a telephone available to defendant to arrange for independent blood-alcohol testing when defendant did not request it, defendant's assertion of his right to obtain such a test after his release triggered a police duty not to unreasonably delay defendant's booking process and release after his arrest for driving under the influence so as to prevent a violation of defendant's due process rights. State v. Hedges, 143 Idaho 884, 154 P.3d 1074 (Ct. App. 2007).

Agricultural Land Use.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court of Idaho held that the limitation on the number of animal units per acre did not violate the substantive due process rights of CAFO operators under this section; the facts illustrated the relationship between the cap on animal units per acre and the county's objective of encouraging the retention of productive agricultural lands and the protection of the aquifer by encouraging good waste management plans. Idaho Dairymen's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

Constitutionality of Legislation.

Defendant's conviction for failing to register as a sex offender under former § 18-8304(1)(b) was reversed as the provision was unconstitutional; the state's interest in apprehending re-offending sex offenders was not rationally advanced by a classification that differentiated between offenders based solely upon their date of entry into the state. Further, the disparity in the statute's treatment of in-state offenders versus those who were convicted elsewhere and subsequently moved to Idaho violated the constitutional right to travel. State v. Dickerson, 142 Idaho 514, 129 P.3d 1263 (Ct. App. 2006).

Idaho's abolition of the insanity defense did not violate defendant's due process rights; evidence of mental illness is expressly allowed, and can be used to rebut the element of intent. State v. Delling, — Idaho —, 267 P.3d 709 (2011).

Double Jeopardy.

Double jeopardy protection was not implicated and was not a bar to resentencing

defendant pursuant to the procedures set forth in the revised death penalty statutes, §§ 18-8004 and 19-2515(3)(b). State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

District court's finding of manifest necessity for a mistrial grounded on alleged physical and emotional deficiencies of defense attorney, together with a determination that defense attorney was ineffective was in error because the district court did not adequately consider alternatives or offer defendant an opportunity to be heard; defendant's motion to dismiss with prejudice should have been granted, as further prosecution of defendant for this crime is barred by the constitutional prohibition against double jeopardy. State v. Manley, 142 Idaho 338, 127 P.3d 954 (2005).

Defendant was not subjected to double jeopardy by being incited and convicted of both having sexual contact with a minor and soliciting sexual contact with a minor, since the two counts contemplated proof of completely different elements, touching and solicitation. State v. Hussain, 143 Idaho 175, 139 P.3d 777 (Ct. App. 2006).

Where the district court dismissed a felony DUI enhancement upon determining that the state had failed to prove beyond a reasonable doubt that defendant was convicted of two DUIs within the preceding ten years and the dismissal was based on an incorrect interpretation of Idaho law, the defendant cannot be tried again without violating this section prohibition of double jepoardy. State v. Howard, 150 Idaho 471, 248 P.3d 722 (2011).

One-year commercial driver's license (CDL) disqualification under § 49-335 was civil in nature and did not rise to the level of a criminal punishment for double jeopardy purposes; the driver was not denied due process because the CDL disqualification statute was not ambiguous as to the date the driver's CDL disqualification was to begin, and estoppel was not an appropriate remedy against the Idaho department of transportation in this case. Buell v. Idaho DOT (In re Driver's License Suspension of Buell), 151 Idaho 257, 254 P.3d 1253 (Ct. App. 2011).

Due Process of Law.

Defendant's due process challenges to the information were waived because he did not raise them before the commencement of trial as required by Idaho Crim. R. 12(b)(2). State v. Quintero, 141 Idaho 619, 115 P.3d 710 (2005).

Due process was not violated where the newspaper article about the county commissioner's statements, before he was elected, was insufficient to support a finding that the commissioner was impermissibly biased in considering an appeal from the county planning and zoning commission's decision. The claim that the other county commissioner was required to recuse herself by reason of improper ex parte contacts was reviewed and properly rejected by the district court as the record was lacking facts or sufficient inferences to establish that a bias would compel recusal. Davisco Foods Int'l, Inc. v. Gooding County, 141 Idaho 784, 118 P.3d 116 (2005).

Punishment of persons 18 to 21 years of age for possession of alcohol, including suspension of driver's license, is not violative of either equal protection or due process rights, since the state has a legitimate interest in the prevention of underage drinking; suspension of a driver's license is a form of deterrence, and the fact that the suspension is applicable to adults between eighteen and twenty-one does not render it unconstitutional, since they are still subject to restrictions on drinking. State v. Bennett, 142 Idaho 166, 125 P.3d 522 (2005).

In a case based on an alleged regulatory taking, a due process claim was properly dismissed because there was no showing that a city's shoreline regulations did not serve a reasonably conceivable legitimate state interest. Moreover, due process and taking claims were different. City of Coeur d'Alene v. Simpson, 142 Idaho 839, 136 P.3d 310 (2006).

Where claimant failed to report the weekly earnings she received as a server at a brewery pub, the industrial commission of the state of Idaho determined that she willfully underreported her weekly income while receiving unemployment benefits. Claimant was not denied due process of law during the appeal from the claims examiner to the industrial commission; claimant was given an opportunity to present evidence to the claims examiner and did not request a hearing before the industrial commission to present additional evidence. Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Where the industrial commission of the state of Idaho determined that claimant she willfully underreported her weekly income while receiving unemployment benefits, she failed to prove that the written notice of the hearing before the appeals examiner failed to give her due process notice of the issues. The written notice indicated that the hearing was to determine whether claimant willfully made a false statement or representation or willfully failed to report a material fact in order to obtain unemployment insurance benefits, according to § 72-1366(12) of the Idaho Employment Security Law. Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Defendant's due process rights were not violated when audio recordings of his confession in a drug case were lost because there was no showing of bad faith on the part of the state since the loss of the recordings was

unintentional; therefore, suppression of the evidence was improper. State v. Lewis, 144 Idaho 64, 156 P.3d 565 (2007).

Due process under the United States or Idaho Constitutions was not violated by the denial of a motion to replace substitute counsel; under the three-prong test, defendant had no constitutional right to counsel in such a proceeding, his presence was not necessary since the grounds were presented in a written motion, and the state had an interest in completing the case since it was the second petition. Rios-Lopez v. State, 144 Idaho 340, 160 P.3d 1275 (Ct. App. 2007).

Appointment of counsel in a habeas corpus proceeding was not warranted because the Sixth Amendment did not apply to civil cases; moreover, the facts were not such that the Due Process Clause required the appointment of counsel either. The case in question only involved the interpretation of a single statute, so it was not complex in nature. Dopp v. Idaho Comm'n of Pardons & Parole, 144 Idaho 402, 162 P.3d 781 (Ct. App. 2007).

Defendant's allegation that his trial interpreter gave advice that was her own opinion and not the result of translating advice from counsel did not support a claim that he was deprived of his due process right to participate in his own defense because he did not show prejudice resulting from an inability to communicate with counsel. Murillo v. State, 144 Idaho 449, 163 P.3d 238, review denied, 2007 Ida. App. LEXIS 76 (Ct. App. 2007).

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126 (2007).

—Appeal from Administrative Body.

Physician had not been denied due process by the medical board's failure to promulgate regulations setting forth clearly defined standards with respect to the use of injectable hormones. One of the purposes of the Medical Practice Act, and particularly § 54-1814, is to assure the public health, safety and welfare, and, consistent with that purpose the board could discipline a physician for providing health care that failed to meet the applicable standard of care, even if it could not prove that his patients had suffered any physical harm. Haw v. Idaho State Bd. of Med., 140 Idaho 152, 90 P.3d 902 (2004).

—Attorney Fee Regulation.

The medical board's award of costs and attorney fees against a physician must be vacated where the physician was denied an opportunity to be heard regarding the amount of costs and fees to be assessed by the board. Haw v. Idaho State Bd. of Med., 140 Idaho 152, 90 P.3d 902 (2004).

—Building Permit.

A city and its director of planning and development services did not violate procedural due process when they mistakenly determined that a developer's building permit had expired. After that decision, the developer received notice and a proper hearing when it appealed to the city council, and any deprivation was cured when the permit was reinstated. Boise Tower Assocs., LLC v. Hogland, 147 Idaho 774, 215 P.3d 494 (2009).

—Instructions.

Defendant's contention that the district court erred in refusing his proposed instruction on credibility, which was based on the pattern credibility instruction in the Idaho Civil Jury Instructions (IDJI), because the Idaho Criminal Jury Instructions (ICJI), which was the instruction used by the court, gave the jury insufficient guidance for the determination of witness credibility and that discrimination was violative of his right to equal protection was without merit because, although the IDJI credibility instruction is longer and more detailed than the ICJI instruction, in substance the two are alike. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

—Jury Selection.

Trial court improperly denied defendant's challenge for cause of juror who stated during voir dire that he was biased towards believing the testimony of a police officer over that of a defendant, and who could make no unequivocal assurance that he would set aside this bias and render an impartial verdict based solely on the facts of the case. State v. Hauser, 143 Idaho 603, 150 P.3d 296 (Ct. App. 2006).

—Post-Sentencing Hearing.

Defendant, who was convicted of sexual battery of a minor and sentenced, did not have a due process right to a post-sentencing hearing on his eligibility for probation prior to the district court's loss of jurisdiction due to the expiration of a 180-day retained jurisdiction period. Taylor v. State, 145 Idaho 866, 187 P.3d 1241 (Ct. App. 2008).

—Prisoners.

Inmate failed to show that his protected liberty or property interests under U.S. Const. amend. XIV and this section were violated by the failure of a warden and prison personnel to return the inmate's personal property, despite the fact that he was entitled to the property while in administrative segregation, because the denial was not an atypical or significant hardship when compared to

normal prison life. Briggs v. Kempf, 146 Idaho 172, 191 P.3d 250 (Ct. App. 2008).

—Probation Hearing.

District court did not err in reinstating and amending defendant's probation where it did not deprive defendant of his right to due process by applying the doctrine of collateral estoppel to find that he violated the terms of his probation by failing to attend and successfully complete the sex offender treatment required by his probation officer. State v. Dempsey, 146 Idaho 327, 193 P.3d 874 (Ct. App. 2008).

—Sentencing Hearing.

Trial court did not err when it denied defendant's motion for a separate restitution hearing after defendant was convicted of grand theft: neither defendant's constitutional due process rights nor § 19-5304(6) was violated as defendant was fully afforded the opportunity and did present evidence relevant to the issue of restitution at both her trial and her sentencing hearing. State v. Blair, 149 Idaho 720, 239 P.3d 825 (Ct. App. 2010).

—Statements of Prosecutor.

Defendant received *Miranda* warnings prior to an interview at the jail which made the prosecutor's question on cross-examination of defendant, commenting that defendant had not previously spoken of an assault with a gun by the victim, an impermissible use of defendant's post-*Miranda* silence; prosecutor's questioning of a detective about defendant's failure to give his version of the events during his jail interview and the prosecution's comments in closing argument in regard to same, were also improper. State v. Lopez, 141 Idaho 575, 114 P.3d 133 (Ct. App. 2005).

In defendant's first-degree murder trial for the killing of his wife, the prosecutor's statement that the victim was speaking from her grave was somewhat inflammatory because it was likely designed to appeal to the sympathies and passions of the jury. However, the comment did not rise to the level of fundamental error, because the statement was simply referring to the victim's body providing evidence about the circumstances surrounding her death, not to her calling out for defendant's conviction. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

In defendant's first-degree murder trial for the killing of his wife, the prosecutor's reference to the victim's family — the fact that she was a mother, a daughter, and a sister whose life had purpose and meaning — while arguably improper, did not constitute fundamental error. The statements were not dwelled upon or made in support of an argument that defendant should receive a harsher punishment; instead, the statements merely reiterated evidence that had been produced at trial, and the trial court instructed the jury on several occasions that the prosecutor's comments were not to be regarded as evidence. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

In defendant's first-degree murder trial for the killing of his wife, the prosecutor's comments that defendant was "screwing" a "21-year-old tramp" were inflammatory and, therefore, improper; but the statements did not result in prejudice, however, given the weight of the evidence against defendant and the numerous limiting instructions issued by the jury. Further, defendant's extra-marital affair was established at trial, and the fact that the prosecutor used crude words to describe the affair did not result in prejudice. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

In defendant's first-degree murder trial for the killing of his wife, the prosecutor's statement, which indicated to the jury that the case was a circumstantial one because only defendant and the victim had been present at the time of the victim's death and that no one who knew what happened had testified, was not an impermissible comment on defendant's silence because, although the statement could be interpreted as a reference to defendant's failure to testify, it could also be accorded other meanings; for example, the comment could have been a reference to the medical examiner's inability to conclusively establish the cause of death. Nothing in the statement explicitly called for the jury to infer that defendant was guilty because of his silence or to convict him on that basis, and the statement was a single, isolated comment made during the course of 17-day trial. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Equal Protection of Laws.

Suspension or revocation of driving privileges do not limit the right to travel, merely the means; suspension of driving privileges may make travel less convenient but there is no constitutional infringement. State v. Bennett, 142 Idaho 166, 125 P.3d 522 (2005).

Exculpatory Evidence.

Defendants charged with purchase, consumption, or possession of alcohol while under 21 years of age were not deprived of due process when the arresting officers dumped out the contents of, and then threw away, the can and bottles containing the alcoholic beverages, where there was no showing or evidence to support an inference that the destroyed evidence would have been exculpatory and defendants did not show that the destruction of the containers and alcohol was prejudicial or done in bad faith. State v. Bennett, 142 Idaho 166, 125 P.3d 522 (2005).

Inadequacy of Counsel.

District court's finding of manifest necessity for a mistrial grounded on alleged physical and emotional deficiencies of defense attorney, together with a determination that defense attorney was ineffective was in error because the district court did not adequately consider alternatives or offer defendant an opportunity to be heard; defendant's motion to dismiss with prejudice should have been granted, as further prosecution of defendant for this crime is barred by the constitutional prohibition against double jeopardy. State v. Manley, 142 Idaho 338, 127 P.3d 954 (2005).

—Conflict of Interest.

No conflict existed that required the disqualification of the entire county public defender's office where defendant was represented by a public defender on a charge of murdering his wife and a new attorney with the public defender's office had previously represented defendant's mother-in-law in civil litigation directly related to his wife's death. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Ineffective Assistance of Counsel.

Defendant's guilty plea was not voluntarily made where it was based on incorrect advice from his counsel, resulting from counsel's clerical error. McKeeth v. State, 140 Idaho 847, 103 P.3d 460 (2004).

Trial counsel rendered a deficient performance by failing to seek a continuance when, on the day of trial, the state's pathologist, in defendant's first degree murder trial, changed his opinion as to the victim's cause of death, from indeterminate to homicide. Murphy v. State, 143 Idaho 139, 139 P.3d 741 (Ct. App. 2006).

In a drug possession case, counsel was not ineffective for concluding that the petitioner was required to admit committing the elements of possession as a prerequisite to claiming that he was entrapped because, regardless of whether inconsistent defenses could have reasonably been argued, it was not professionally unreasonable to conclude that, in the absence of definitive authority, Idaho applied the general rule that the petitioner must necessarily admit committing an offense before he could claim entrapment. Suits v. State, 143 Idaho 160, 139 P.3d 762 (Ct. App. 2006).

Post-conviction court erred in summarily dismissing appellant's claim that counsel was ineffective in probation revocation proceedings for failing to challenge the terms of appellant's probation and failing to present mitigating evidence. Counsel's failure to present testimony from appellant's grandmother that would have contradicted the probation officer's testimony and counsel's failure to present evidence of appellant's untreated mental health problem raised a material question regarding the vigor and competence of his counsel's representation. Knutsen v. State, 144 Idaho 433, 163 P.3d 222 (Ct. App. 2007).

Defendant failed to raise any material issues of fact warranting an evidentiary hearing with regard to whether his trial counsel provided ineffective assistance by depriving him of his right to testify, because he failed to demonstrate a reasonable probability that had he testified, the jury's verdict would have been different. Kuehl v. State, 145 Idaho 607, 181 P.3d 533 (Ct. App. 2008).

Although defendant argued that his lawyer provided ineffective assistance by failing to argue in support of a motion for judgment of acquittal that the State impermissibly relied on the uncorroborated testimony of an accomplice — a confidential informant, the confidential informant was not an accomplice to defendant, and the rule prohibiting an accomplice's uncorroborated testimony did not apply. Because the argument would have failed if counsel had presented it, defendant's claim of ineffective assistance of counsel failed. State v. Chacon, 145 Idaho 814, 186 P.3d 670 (Ct. App. 2008).

Denial of the inmate's petition for postconviction relief was appropriate because he failed to establish that there existed admissible medical evidence of his alleged consistent impotence. Therefore, he failed to show that his counsel rendered deficient performance in not presenting the evidence in question. Curless v. State, 146 Idaho 95, 190 P.3d 914 (Ct. App. 2008).

Inmate's claim that his counsel had been ineffective due to trial court's exclusion of evidence his counsel had failed to disclose was without merit. The testimony about the two victims engaging in sexual acts with one another would have been just as likely to corroborate the victims' claims of abuse as it would have been to exonerate the inmate. Curless v. State, 146 Idaho 95, 190 P.3d 914 (Ct. App. 2008).

Defendant failed to meet his burden of showing that his counsel provided ineffective assistance by failing to be present at the psychosexual evaluation (PSE), failing to move to suppress the PSE, failing to ensure that defendant was read his *Miranda* rights prior to the presentence investigative report, and failing to secure an independent psychiatric evaluation; defendant failed to meet his burden of showing prejudice resulting from his counsel's ineffective assistance in failing to advise him of his rights prior to the PSE, and the district court's order summarily dismissing defendant's application of post-conviction relief was affirmed. Hughes v. State, 148 Idaho 448, 224 P.3d 515 (Ct. App. 2009).

Before deciding whether to plead guilty, a defendant is entitled to the effective assis-

tance of competent counsel. Defendant who entered a plea of guilty to first-degree murder was entitled to post-conviction relief where his counsel gave him erroneous advice that he would receive a fixed life sentence if he went to trial and only 10 years if he pleaded guilty: but, in fact, the district court sentenced defendant to an indeterminate life sentence with thirty years fixed. Booth v. State, 151 Idaho 612, 262 P.3d 255 (2011).

Miranda Rights.

By testifying on direct and cross-examination regarding the circumstances surrounding his arrest, defendant opened the door for the state to rebut the impression created by that testimony; because the comments elicited by the state did not exceed the scope of defendant's testimony, his right to due process was not violated when the detective testified about defendant's post-*Miranda* silence. State v. Dougherty, 142 Idaho 1, 121 P.3d 416 (Ct. App. 2005).

Notice.

Magistrate's order that defendant juvenile's mother reimburse county for the costs of defendant's detention was reversed on appeal, because meaningful, constitutional notice was not provided to defendant's mother. While it appeared that defendant's mother had notice of her son's disposition hearing, nothing in the record indicated that she had prior notice that detention costs could be imposed upon her at that hearing. In re Doe, 147 Idaho 542, 211 P.3d 787 (Ct. App. 2009).

Procedural due process protects the minimum guarantees of notice and a hearing where deprivation of a property interest may occur. The opportunity to be heard must occur at a meaningful time and in a meaningful manner. Boise Tower Assocs., LLC v. Hogland, 147 Idaho 774, 215 P.3d 494 (2009).

A hearing prior to the deprivation of property is not required in all cases. Interim suspensions of licenses and temporary seizures of property may be undertaken without a pre-deprivation hearing, provided there is sufficient factual basis for the action and that prompt administrative or judicial review of the merits of the decision is available. Boise Tower Assocs., LLC v. Hogland, 147 Idaho 774, 215 P.3d 494 (2009).

Persistent Violator Enhancement Statute.

Persistent violator enhancement statute did not violate the equal protection clause, because there was no discernible classification of persons convicted of grand theft, when grand theft did not provide for alternative sentencing; defendant had a prior conviction for grand theft and a grand theft conviction was always a felony, therefore, all persons convicted of grand theft in Idaho would have acquired one felony for enhancement purposes. State v. Haggard, 146 Idaho 37, 190 P.3d 193 (Ct. App. 2008).

Post-conviction Relief.

In defendant's motion for post-conviction relief after being convicted of marijuana trafficking, trial court improperly refused to either appoint counsel, or give notice as to why the claim was frivolous. Although the allegations in defendant's claim for relief were insufficient to state a claim, a subsequent letter to the court raised a valid issue regarding trial counsel's failure to seek suppression of evidence based on a violation of the knock and announce rule, and under the lenient standard which should have been applied, this was sufficient to raise the possibility of a valid claim. Plant v. State, 143 Idaho 758, 152 P.3d 629 (Ct. App. 2006).

In a capital case, the heightened burden of proof in § 19-2719, requiring that petitioner show that the claims in his fourth petition for post-conviction relief were not known and could not have reasonably been known within 42 days of judgment, does not violate petitioners' due process rights. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

Prosecutorial Misconduct.

A defendant did not suffer a violation of her due process rights on the ground that there were inconsistencies in the prosecution of three co-defendants' separate trials, because the prosecution did not advance a different theory or inconsistent evidence and the State maintained throughout each trial that the defendant and her three co-defendants were all culpable as assailants in the same attack. State v. Pearce, 146 Idaho 241, 192 P.3d 1065 (2008).

When an objection to alleged prosecutorial misconduct was raised at trial, on review, an appellate court must use a two-part test to determine whether the misconduct requires reversal. First, the court asks whether the prosecutor's challenged action was improper. If it was not, then there was no prosecutorial misconduct. If the conduct was improper, the court then considers whether the misconduct prejudiced the defendant's right to a fair trial or whether it was harmless. The defendant carries the burden of proving prejudice. When a defendant is unable to demonstrate prejudice, the misconduct will be regarded as harmless error. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

A prosecutor's comment on a defendant's failure to call a witness does not shift the burden of proof, and is, therefore, permissible, so long as the prosecutor does not violate the defendant's Fifth Amendment rights by commenting on the defendant's failure to testify.

State v. Mendoza, 151 Idaho 623, 262 P.3d 266 (Ct. App. 2011).

Right to Counsel.

In prosecution for sexual abuse charges, defendant's decision to discharge his counsel and re-open case to present dubious hypnosis defense was knowing and voluntary. Although court did not issue complete warnings at time of waiver, defendant had been fully warned prior to trial of the risks of proceeding pro se, had no mental illness, had not been threatened or advised to proceed without a lawyer, and possessed sufficient education to understand the consequences of his decision. Although his decision may not have been wise, it was knowing and voluntary. State v. Dalrymple, 144 Idaho 628, 167 P.3d 765 (2007).

Appellant filed a pro se petition for post-conviction relief alleging ineffective assistance of counsel, but, after years of neglect by his appointed attorneys, his petition for post-conviction relief was dismissed for inactivity pursuant to Idaho R. Civ. P. 40(c). The supreme court held appellant was permitted to seek relief from the judgment of dismissal under Idaho R. Civ. P. 60(b). However, appellant was not entitled to appointment of new counsel under § 19-856, upon remand, because there is no constitutional right to an attorney in state post-conviction proceedings. Eby v. State, 148 Idaho 731, 228 P.3d 998 (2010).

—Post-conviction Proceedings.

Trial court erred in summarily dismissing pro se inmate's application for post-conviction relief without first giving notice of perceived deficiencies in the pleading and appointing counsel to assist the inmate in developing the claims to present a viable basis for relief. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

—Waiver.

On motion to suppress evidence obtained as a result of interrogation, district court improperly ended its analysis with the fact that defendant had instigated contact with investigators. Since defendant had been formally charged and counsel appointed, court should have considered whether his waiver was knowing, intelligent and voluntary. State v. Contreras-Gonzales, 146 Idaho 41, 190 P.3d 197 (Ct. App. 2008).

Self-Incrimination.

In an injury to a child case, defendant's right to remain silent was not violated by the prosecutor's comment on defendant's silence because the testimony and comments did not explicitly state that defendant had declined to answer questions about how the child received the bruises or directly ask the jury to infer defendant's guilt from his silence. Additionally, other evidence overwhelmingly demonstrated defendant's guilt. State v. Timmons, 145 Idaho 279, 178 P.3d 644 (Ct. App. 2007).

Defendant was charged with lewd conduct with a child. When he chose to represent himself, he had the right to cross-examine the victim/child directly, rather than by providing written questions to be asked by standby counsel through closed circuit television. State v. Folk, 151 Idaho 327, 256 P.3d 735 (2011).

Self-Representation.

Defendant's waiver of counsel was valid, and the district court's decision to deny him an investigator, was not error where the district judge advised defendant of the dangers of self-representation and recommended against going to trial without the assistance of counsel, where the defendant had been declared not only competent but also of above average intelligence and defendant was provided with an attorney advisor. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Speedy Trial.

Denial of defendant's motion to dismiss his criminal case after he was charged with three felonies for the alleged violation of his constitutional speedy trial rights was appropriate because defendant contributed in some measure to the delay, in part by indicating that he would waive his speedy trial rights at an early point in the proceedings and by failing to demand a prompt trial. State v. Lopez, 144 Idaho 349, 160 P.3d 1284 (Ct. App. 2007).

Defendant's righs to a speedy trial were not violated by a delay of a little over seven months from the date when defendant was charged. The delay was minimal and there was no cause of delay that was heavily chargeable to the state. Defendant did not demand a speedy trial until late in the proceedings, and anxiety experienced by the defendant was insufficient to support a claim of a speedy trial violation. State v. Crockett, 151 Idaho 674, 263 P.3d 139 (Ct. App. 2011).

Collateral References. Denial of accused's request for initial contact with attorney in cases involving offenses other than drunk driving — Cases focusing on presence of inculpatory statements. 124 A.L.R.5th 1.

Failure of state prosecutor to disclose existence of plea bargain or other deals with witness as violating due process. 12 A.L.R.6th 267.

Adoption and application of "tainted" approach or "dual motivation" analysis in determining whether existence of single discriminatory reason for peremptory strike results in automatic Batson violation when neutral rea-

sons also have been articulated. 15 A.L.R.6th 319.

Adequacy of defense counsel's representation of criminal client regarding guilty pleas — Coercion or duress. 19 A.L.R.6th 411.

Voluntary nature of confession as affected by appeal to religious beliefs. 20 A.L.R.6th 479.

Failure of state prosecutor to disclose exculpatory tape recorded evidence as violating due process. 24 A.L.R.6th 1.

What constitutes "custodial interrogation" at hospital by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — Suspect injured or taken ill. 25 A.L.R.6th 379.

What constitutes "custodial interrogation" of juvenile by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At police station or sheriff's office. 26 A.L.R.6th 451.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — At suspect's or third party's residence. 28 A.L.R.6th 505.

What constitutes "custodial interrogation" of adult by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At police station or sheriff's office, where defendant voluntarily appears or appears at request of law enforcement personnel, or where unspecified as to circumstances upon which defendant is present. 29 A.L.R.6th 1.

Comment note: Construction and application of supreme court's ruling in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed. R. Evid. Serv. 1077 (2004), with respect to confrontation clause challenges to admissibility of hearsay statement by declarant whom defendant had no opportunity to cross-examine. 30 A.L.R.6th 1.

What constitutes "custodial interrogation" at hospital by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — Suspect hospital patient. 30 A.L.R.6th 103.

Adequacy of defense counsel's representation of criminal client regarding guilty pleas — Probation, parole, or pardon possibilities. 31 A.L.R.6th 49.

What constitutes "custodial interrogation" at hospital by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his federal constitutional rights before custodial interrogation — Suspect hospital visitor, not patient. 31 A.L.R.6th 465.

What constitutes "custodial interrogation" of adult by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At police station or sheriff's office, where defendant is escorted or accompanied by law enforcement personnel, or is otherwise at station or office involuntarily. 32 A.L.R.6th 1.

Determination of request for exclusion of public from state criminal trial in order to preserve safety, confidentiality, or well-being of witness who is not undercover police officer — Issues of proof, consideration of alternatives, and scope of closure. 32 A.L.R.6th 171.

Basis for exclusion of public from state criminal trial in order to preserve safety, confidentiality, or well-being of witness who is not undercover police officer. 33 A.L.R.6th 1.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — At police vehicle, where defendant outside, but in immediate vicinity. 34 A.L.R.6th 1.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — At police vehicle, where defendant in moving vehicle, or where unspecified as to whether vehicle moving or stationary. 35 A.L.R.6th 127.

What constitutes "custodial interrogation" within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — In jail or prison. 38 A.L.R.6th 97.

Application of stigma-plus due process claims to education context. 41 A.L.R.6th 391.

Propriety of using otherwise inadmissible statement, taken in violation of *Miranda* rule, to impeach criminal defendant's credibility — State cases. 42 A.L.R.6th 237.

Adequacy of defense counsel's representation of criminal client regarding entrapment defense — State cases. 43 A.L.R.6th 475.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — Upon hotel property. 45 A.L.R.6th 337.

Suppression of statements made during police interview of non-english-speaking defendant. 49 A.L.R.6th 343.

What constitutes "custodial interrogation" within rule of requiring that suspect be informed of his federal constitutional rights before custodial interrogation — Private security guards, detectives, or police. 51 A.L.R.6th 219.

Failure of state prosecutor to disclose exculpatory physical evidence as violating due process — Weapons. 53 A.L.R.6th 81.

Failure of state prosecutor to disclose exculpatory physical evidence as violating due process — Personal items other than weapons. 55 A.L.R.6th 391.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — At nonpolice vehicle for traffic stop, where defendant outside, but in immediate vicinity of vehicle, or where unspecified as to whether inside or outside of nonpolice vehicle. 55 A.L.R.6th 513.

Failure of state prosecutor to disclose exculpatory physical evidence as violating due process — Evidence other than weapons or personal items. 56 A.L.R. 6th 185.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of his or her federal constitutional rights before custodial interrogation — In nonpolice vehicle for traffic stop. 56 A.L.R. 6th 323.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At nonpolice vehicle for other than traffic stop. 57 A.L.R. 6th 83.

What constitutes "custodial interrogation" by police officer within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — Where unspecified as to precise location of roadside questioning by law enforcement officers. 58 A.L.R. 6th 215.

What constitutes "custodial interrogation" within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At suspect's place of employment or business. 58 A.L.R. 6th 439.

What constitutes "custodial interrogation" within rule of *Miranda v. Arizona* requiring that suspect be informed of federal constitutional rights before custodial interrogation — At school. 59 A.L.R. 6th 393.

Construction and application of constitutional rule of *Miranda* — Supreme court cases. 17 A.L.R. Fed. 2d 465.

Construction and application of Speedy Trial Act, 18 USCS §§ 3161 to 3174 — United States supreme court cases. 46 A.L.R. Fed. 2d 129.

§ 14. Right of eminent domain.

Analysis

Access to property.
Constitutionality.
Private use or gain.
Unauthorized fees and charges.

Access to Property.

Relocation of an access road was permitted under § 55-313, and did not require the consent of the neighboring dominant estate holders; the relocation did not constitute a taking, and there was no genuine issue of material fact as to whether the neighbors sustained an injury. Statewide Constr., Inc. v. Pietri, 150 Idaho 423, 247 P.3d 650, overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Constitutionality.

The immunity provision found at former § 22-4803A(6) [now see §§ 39-114 and 52-108] does not effect a taking in violation of the Fifth Amendment of the United States Constitution or this section. It also does not violate Idaho Const. art. I, § 1 or the prohibition against local or special laws found in Idaho Const. art. III, § 19. The statute is constitutional. Moon v. N. Idaho Farmers Ass'n, 140 Idaho 536, 96 P.3d 637 (2004), cert. denied, 543 U.S. 1146, 125 S. Ct. 1299, 161 L. Ed. 2d 106 (2005).

Private Use or Gain.

Private individuals may not take the property of other private individuals in order to enhance their purely private enjoyment of their own property; the proposed use need not be strictly public, but it must benefit the public welfare or the economy of the state. Backman v. Lawrence, 147 Idaho 390, 210 P.3d 75 (2009).

Unauthorized Fees and Charges.

City's exaction of a liquor license transfer fee could constitute the taking of property without just compensation where the city had no authority to charge a transfer fee. BHA Invs., Inc. v. City of Boise, 141 Idaho 168, 108 P.3d 315 (2005).

Collateral References. Application of *Kelo v. City of New London,* 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005), to "public use" restrictions in federal and state constitutions takings clauses and eminent domain statutes. 21 A.L.R.6th 261.

Elements and measure of compensation in eminent domain proceeding for temporary taking of property. 49 A.L.R.6th 205.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

Construction and application of "public use" restriction in Fifth Amendment's takings slause — United States supreme court cases. 10 A.L.R. Fed. 2d 407.

§ 15. Imprisonment for debt prohibited.

Theft.

Theft statute could not be interpreted to include mere nonpayment of debt, as it would run afoul of this section, which specifies that there shall be no imprisonment for debt in this state, except in cases of fraud. State v. Culbreth, 146 Idaho 322, 193 P.3d 869 (Ct. App. 2008).

§ 16. Bills of attainder, etc., prohibited.

Analysis

Bills of attainder.
Ex post facto laws.
Persistent violator enhancement statute.

Bills of Attainder.

Post-conviction relief was properly denied because defendant's counsel was not ineffective for failing to argue that § 18-3316 was unconstitutional as a bill of attainder and an ex post facto law. Counsel was not required to raise a nonmeritorious issue in the district court. Zivkovic v. State, 150 Idaho 783, 251 P.3d 611 (Ct. App.), cert. denied, — U.S. —, 132 S. Ct. 555, 181 L. Ed. 2d 401 (2011).

Ex Post Facto Laws.

Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, § 18-8301 et seq., is not punitive and, therefore, is not an impermissible ex post facto law. State v. Gragg, 143 Idaho 74, 137 P.3d 461 (Ct. App. 2005).

Aggravated DUI defendant was not being prosecuted for any offense which he committed before the 2006 amendment to § 18-8005(5), and his exposure to prosecution for the present offense had not even arisen, let alone expired, when the statute was amended; defendant was not being punished in the present case for the offenses he committed in 2001 and 2003, and he was prosecuted only for the DUI that he committed in 2007, about a year after the Idaho legislature amended the statute. State v. Lamb, 147 Idaho 133, 206 P.3d 497 (Ct. App. 2009).

The Family Law License Suspensions Act, § 7-1401 et seq., does not violate the ex post facto prohibition of this section or U.S. Const., art. I, § 9, cl. 3, because the act does not invoke criminal jurisprudence. Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009).

Retroactive application of 2006 amended version of § 19-2604 did not violate the constitutional prohibition against ex post facto laws under U.S. Const., Art. I, § 9, cl. 3 and this section, because the law requiring a sex offender to register was not punitive in nature, but was remedial. State v. Hardwick, 150 Idaho 580, 249 P.3d 379 (2011).

Persistent Violator Enhancement Statute.

Persistent violator enhancement statute was not an illegal bill of attainder because it did not single out a specific group or individual, it did not impose punishment, and judicial protections were a required prerequisite to the imposition of an enhanced sentence pursuant to its terms. State v. Haggard, 146 Idaho 37, 190 P.3d 193 (Ct. App. 2008).

Collateral References. Construction and application of U.S. Const. Art. I, § 9, cl. 3, proscribing federal bills of attainder. 62 A.L.R. 6th 517.

Construction and application of U.S. Const. Art. I, § 10, cl. 1, and state constitutional provisions proscribing state bills of attainder. 63 A.L.R. 6th 1.

§ 17. Unreasonable searches and seizures prohibited.

Cited in: State v. Jones, 151 Idaho 943, 265 P.3d 1155 (Ct. App. 2011).

Analysis

Arrest.
—Probable cause.
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Arrest.

—Probable Cause.

A temporarily opened attached garage is a place in which a person would have a reasonable expectation of privacy. Nevertheless, police officers who activated their overhead lights as defendant pulled into his driveway, and then followed him into his garage, had probable cause to arrest defendant for battery based on victim's specific identification of him as her attacker and their observation that he and his vehicle matched the description provided by the victim. State v. Jenkins, 143 Idaho 918, 155 P.3d 1157 (2007).

Blood Alcohol Test.

Although a driver impiedly consents to a blood-alcohol test, when there is reasonable suspicion, by operating a motor vehicle on state highways, the fourth amendment and this section require police to perform the test in a medically acceptable manner and with the use of only reasonable force. Miller v. Idaho State Patrol, 150 Idaho 856, 252 P.3d 1274 (2011).

Blood Draw.

Where DUI defendant ultimately refused to submit to breathalyzer, police officer's transporting him to a hospital and requesting a blood draw over defendant's objection was not a violation of defendant's constitutional rights, as defendant's implied consent to search fell within the well-recognized consent exception to warrantless searches, and the actions of police were reasonable under the circumstances. State v. Diaz, 144 Idaho 300, 160 P.3d 739 (2007).

Consent.

Where police officers had observed defendant smoking a marijuana cigarette, their statement that defendant would be subject to arrest if he did not turn over what drugs he had did not render defendant's subsequent consent to search his truck involuntary, as it merely informed defendant of their intention to do something that was within their authority based on the circumstances. State v. Garcia, 143 Idaho 774, 152 P.3d 645 (Ct. App. 2006).

Where a homeowner's guardian authorized the police to search the homeowner's house, the warrantless entry into defendant's locked room was unreasonable and required suppression of evidence because (1) defendant had an expectation of privacy, (2) the guardian lacked actual authority to consent to the police search due to a lack of common authority, and (3) there was no apparent authority to consent. State v. Fancher, 145 Idaho 832, 186 P.3d 688 (Ct. App. 2008).

Although time lapse of forty minutes and the fact that the officers did not know which apartment defendant had entered rendered initial entry into defendant's apartment unjustified by the hot pursuit exception, defendant's wife's subsequent consents were voluntarily given, and she signed a written voluntary consent form that contained language informing her of her constitutional right to refuse consent. State v. Ballou, 145 Idaho 840, 186 P.3d 696 (Ct. App. 2008).

Police officers reasonably believed a probationer, who lived in an RV on defendant's property, had authority to consent to a search of the common areas of defendant's home. Without basic amenities in his RV, it appeared that the probationer was not merely a guest, but rather used defendant's house as an extension of his own home. State v. Hansen, 151 Idaho 342, 256 P.3d 750 (2011).

Construction.

Although the wording of this section and the Fourth Amendment of the United States Constitution is similar, the supreme court of Idaho, at times, construes the provisions of the Idaho Constitution to grant greater protection than that afforded under the United States supreme court's interpretation of the federal Constitution. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

Although defendant argued that both constitutions were violated, he provided no cogent reason why this section was to be applied differently than the Fourth Amendment in this case, and thus the court relied on judicial interpretation of the Fourth Amendment in its analysis of defendant's claims. State v. Bordeaux, 148 Idaho 1, 217 P.3d 1 (Ct. App. 2009).

—Affidavit.

Word "affidavit," as used in this section, is broad enough to include the recording of sworn testimony. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

Control of Premises.

Summary dismissal of inmate's petition for postconviction relief on the basis of ineffective counsel was improper. Inmate has been convicted of manufacturing methamphetamine

in a rented shed which had been searched pursuant to consent by property resident. Defense counsel's failure to challenge search was prejudicial. Lint v. State, 145 Idaho 472, 180 P.3d 511 (Ct. App. 2008).

Exception to Warrant Requirement.

Because no evidence of regular and large-scale drug trafficking by defendant was presented to the magistrate, the state's claim that an exception to the warrant requirement allowed a finding of probable cause to search a drug dealer's home where there was evidence showing that the homeowner was engaged in regular and large-scale drug trafficking was without merit. State v. Belden, 148 Idaho 277, 220 P.3d 1096 (Ct. App. 2009).

Exclusion of Evidence.

While police officer's initial detention of defendant was without reasonable suspicion, it ended when defendant jumped up from picnic table where officer was questioning him and ran. Thus, methamphetamine dropped by defendant when he was tackled was not suppressible under the fruit of the poisonous tree theory. Had defendant remained at table, however, evidence would have been suppressible. State v. Zuniga, 143 Idaho 431, 146 P.3d 697 (Ct. App. 2006).

Issue of whether police officers' entry of defendant's home was unlawful was immaterial, because officers did not exploit the intrusion to obtain any evidence. Even though officers acquired evidence of defendant's violent actions in close temporal proximity to their allegedly unlawful intrusion, any causal connection between the entry and the acquisition of evidence was broken by defendant's illegal acts of shooting at the police officers. State v. Deisz, 145 Idaho 826, 186 P.3d 682 (Ct. App. 2008).

Where a homeowner's guardian authorized the police to search the homeowner's house and the warrantless entry into defendant's locked room was unreasonable, evidence seized inside the room and defendant's statements to police immediately after the search had to be suppressed; however, evidence obtained as a result of interviews with other residents was not suppressed because their identities were not discovered as a result of the illegal search and the officers already had a motive to question the residents about drugs before they found drugs and paraphernalia in defendant's room. State v. Fancher, 145 Idaho 832, 186 P.3d 688 (Ct. App. 2008).

Exigent Circumstances.

Warrantless entry into a residence to preserve evidence of the felony crime of trafficking in marijuana was not invalid because it was done before the search warrant hearing to preserve evidence of a nonviolent crime. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

United States supreme court holds that where officers, having probable cause, enter premises, and with probable cause, arrest the occupants who have legitimate possessory interests in its contents and take them into custody and, for no more than the period here involved, secure the premises from within to preserve the status quo while others, in good faith, are in the process of obtaining a warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

In prosecution for possession and trafficking of methamphetamine, trial court erred in denying defendants motion to suppress evidence obtained as a result of police officer's entry, along with firefighters, into defendant's garage after a fire had been put out. There was no exigency that would allow police to follow emergency personnel into the garage without a search warrant, because the firefighters did not find any contraband or evidence of a crime while investigating the fire's cause and they did not request the assistance of a police officer. State v. Bunting, 142 Idaho 908, 136 P.3d 379 (Ct. App. 2006).

In prosecution for trafficking in marijuana, trial court properly denied defendant's motion to suppress evidence obtained as a result of firefighters' entry into his warehouse to investigate the cause of a nearby grass fire. The possibility of electrical problem in the building caused a need to investigate, and the late hour and absence of anyone to provide access to the building compelled a need to act, and there was no time to get a search warrant or consent. The heightened privacy expectation for a private home was absent, and the firefighters were not seeking crime evidence. State v. O'Keefe, 143 Idaho 278, 141 P.3d 1147 (Ct. App. 2006).

Exigent circumstances existed so as to permit officers to enter home of DUI suspect and make a warrantless arrest, where they were speaking with her at the threshold of the door while she was four feet inside the home, she smelled of alcohol and slurred her speech, she had admitted to drinking and driving, which was corroborated by witnesses, and where there was a risk of imminent destruction of evidence through the dissipation of her blood alcohol content. State v. Robinson, 144 Idaho 496, 163 P.3d 1208 (Ct. App. 2007).

The distinction between felony and misdemeanor for purposes of the exigent circumstances doctrine no longer has a valid basis in state or federal law. The logical implication from the state and federal cases is that jailable misdemeanors are encompassed within the exigent circumstances exception allowing warrantless entry to preserve evi-

dence. State v. Robinson, 144 Idaho 496, 163 P.3d 1208 (Ct. App. 2007).

Blood draw of unconscious DUI suspect was permissible under the exigent circumstances exception to a warrant and also pursuant to defendant's implied consent. State v. Dewitt, 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008).

Warrantless entry into a residence was permissible under the exigent circumstances exception to the warrant requirement where the officers had a legitimate concern for the safety of the individuals inside the residence. An officer had seen a man attempting to enter or leave the premises via a window, the identity of the man could not be confirmed, family members of the house's resident did not know the man, and repeated attempts to communicate with those inside the house went unanswered. State v. Araiza, 147 Idaho 371, 209 P.3d 668 (Ct. App. 2009).

Expectation of Privacy.

Where a driver fails to produce a valid driver's license, proof of insurance, and registration, there is no reason to prohibit an officer from checking both the dashboard and doorjamb vehicle identification numbers (VIN) as a precaution to ensure that the vehicle is not stolen; therefore, a motion to suppress evidence was properly denied where an officer saw marijuana seeds on the floorboard of vehicle as he opened a driver's door to find a VIN. Defendant had no recognized privacy interest in the VIN, the officer's invasion was minimal, the officer was permitted to open the vehicle door, and glancing around the vehicle was not a search. State v. Metzger, 144 Idaho 397, 162 P.3d 776 (Ct. App. 2007).

Warrantless search of temporary structure built on public forest lands violated defendant's reasonable expectation of privacy, because, even though he was a squatter, defendant had not been asked to leave by department of lands. Search was not incident to arrest, as it began 45 minutes afterwards. Search could also not be justified under plain view doctrine, as items lawfully viewed from outside of hooch could have been used as basis for telephonic search warrant instead. State v. Pruss, 145 Idaho 623, 181 P.3d 1231 (2008).

Where a homeowner's guardian authorized the police to search the homeowner's house, the warrantless entry into defendant's locked room was unreasonable and required suppression of evidence because, inter alia, defendant had an expectation of privacy since defendant was a resident and took specific steps to maintain defendant's privacy within the house by locking the door. State v. Fancher, 145 Idaho 832, 186 P.3d 688 (Ct. App. 2008).

In trial for transferring body fluid that might contain human immunodeficiency virus (HIV) after engaging in oral sex with woman without advising her of his HIV status, trial court properly denied defendant's motion to suppress documents released by health department to prosecutor's office. Defendant had submitted laboratory reports documenting his HIV status to health department in order to obtain HIV-related services, and he, thereby, assumed risk that the documents would be further disclosed. State v. Mubita, 145 Idaho 925, 188 P.3d 867 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Field Sobriety Tests.

Defendant's consent to perform field sobriety tests was not required. Defendant acknowledged that the initial detention for investigation of DUI was based on reasonable suspicion and, therefore, was permissible. Trial court did not err in denying defendant's motion to suppress evidence of defendant's performance on field sobriety tests. State v. Buell, 145 Idaho 54, 175 P.3d 216 (Ct. App. 2008).

Freedom to Leave.

Trial court improperly suppressed cocaine found in defendant's car on the ground that a police officer's use of a spotlight to illuminate defendant's car amounted to a display of authority sufficient to create a detention under this section and the Fourth Amendment of the United States Constitution. The use of a spotlight alone, without the police's emergency lights, would not lead a reasonable person to believe that he was not free to leave, although it could be considered under the totality of the circumstances. State v. Baker, 141 Idaho 163, 107 P.3d 1214 (2004).

Where officers told defendant that "he needed to come speak to them" without any reasonable suspicion he had engaged in illegal activity, an illegal seizure had occurred, as the officers' language was sufficiently coercive as to make defendant feel he was not free to leave. Consequently, physical evidence obtained in a subsequent consent search was suppressed. State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct. App. 2006).

Inventory Search.

Trial court erred in denying defendant's motion to suppress evidence of marijuana and heroin found in a locked safe recovered from his apartment while officers were removing items pursuant to a writ of execution; any suspicion the officers had that the safe contained contraband did not alleviate the necessity for the sheriff's department to either get a warrant or to establish, and its officers to follow, a standardized criteria for dealing with locked containers discovered during an inventory search. State v. Owen, 143 Idaho 274, 141 P.3d 1143 (Ct. App. 2006).

Investigative Stop.

During a traffic stop, defendant was not unreasonably detained when one officer requested identification of the driver of the vehicle and another officer requested identification of the rear passengers. State v. Roe, 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004).

Second officer's visual inspection of vehicle interior with flashlight during and briefly after issuance of a speeding citation to the drivers by first officer did not constitute an unreasonable search and seizure. State v. Gomez, 144 Idaho 865, 172 P.3d 1140 (Ct. App.), review denied, 2007 Ida. LEXIS 232 (2007).

Based on a response to a possible burglary, an officer was justified in conducting a *Terry* frisk that led the officer to the lawful discovery of contraband cigarettes in juvenile defendant's pocket. Upon defendant's admission that he also possessed marijuana, the officer was permitted to reach into defendant's pocket and remove the marijuana. State v. Doe (In re Doe), 145 Idaho 980, 188 P.3d 922 (Ct. App. 2008).

The length and scope of an initial investigatory detention may be lawfully expanded, if there exist objective and specific articulable facts that justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. State v. Grantham, 146 Idaho 490, 198 P.3d 128 (Ct. App. 2008).

Knock and Announce.

District court erred in denying suppression motion of defendant charged with possession of a controlled substance with intent to deliver; the five seconds the police waited after a knock and announce was not a reasonable length of time to allow an occupant of defendant's home to answer the door in the early morning, when no exigency existed or arose and the alleged volume of drugs in the home was itself insufficient to create reasonable suspicion of an exigency allowing the police to almost immediately enter the home after knocking and announcing. State v. Ramos, 142 Idaho 628, 130 P.3d 1166 (Ct. App. 2005).

In defendant's motion for post-conviction relief after being convicted of marijuana trafficking, trial court improperly refused to either appoint counsel, or give notice as to why the claim was frivolous. Although the allegations in defendant's claim for relief were insufficient to state a claim, a subsequent letter to the court raised a valid issue regarding trial counsel's failure to seek suppression of evidence based on a violation of the knock and announce rule, and under the lenient standard which should have been applied, this was sufficient to raise the possibility of a valid claim. Plant v. State, 143 Idaho 758, 152 P.3d 629 (Ct. App. 2006).

Motion to Suppress.

Because a stop was made under reasonable suspicion and the detention of defendant was related to the purpose of the stop, the court affirmed the denial of defendant's motion to suppress. State v. Bordeaux, 148 Idaho 1, 217 P.3d 1 (Ct. App. 2009).

Parolee.

Parolee is entitled to no greater Fourth Amendment protections in another's apartment than he has received or can assert with respect to his own home, and the Idaho Constitution offers no greater protection; therefore, a motion to suppress evidence should have been denied in a case where a parole officer, after receiving a tip, conducted a search of a residence where defendant may have been residing to determine if he was complying with the conditions of parole. State v. Cruz, 144 Idaho 906, 174 P.3d 876 (Ct. App. 2007).

Plain View.

Multiple searches of defendant's home and barns all stemmed from police officers' initial observation of a stolen utility trailer's serial number. As the trial court made no factual findings as to whether this serial number was in open view from a legal vantage point, the case was remanded for this issue to be determined. State v. Tietsort, 145 Idaho 112, 175 P.3d 801 (Ct. App. 2007).

Probable Cause.

Detective indicated in an affidavit that he was informed by pharmacy employees that defendant and his co-actors were purchasing large amounts of pseudoephedrine that they obtained from the pharmacies and that the detective had personally observed the names of defendant and the co-actors in the pharmacies' written pseudoephedrine logs; thus, under the Fourth Amendment, this section, and Idaho R. Crim. P. 4(e), the requisite probable cause established that defendant was involved in illegal drug activity and that there was a fair probability that contraband or evidence of that activity would be found at defendant's residence. State v. Harper, — Idaho —, 266 P.3d 1198 (Ct. App. 2011).

—Affidavit.

Trial court did not err in dismissing defendant's motion for postconviction relief, because counsel was not ineffective for failing to file a motion to suppress; the information in an affidavit from an officer who conducted the undercover operation was sufficient to provide probable cause for the issuance of a warrant. Wolf v. State, — Idaho —, 266 P.3d 1169 (Ct. App. 2011).

—Detention.

Border patrol agent had not finally confirmed defendant's immigration status as a

United States citizen until they arrived at the jail, after marijuana had been discovered; thus, the detention was not extended by the use of a drug dog, as the purpose of the stop for an immigration check had not been concluded. State v. Bordeaux, 148 Idaho 1, 217 P.3d 1 (Ct. App. 2009).

—Reasonable Suspicion.

In prosecution for driving under the influence, trial court erred in suppressing evidence obtained after police officers approached stopped vehicle which they had just observed driving without headlights and with its passenger door open and, after observing defendant curled up on the floor behind the front seats, opened door and ordered defendant to exit vehicle, because at that point, the officers possessed a reasonable suspicion to detain defendant driver for the traffic violations they had witnessed. State v. Irwin, 143 Idaho 102, 137 P.3d 1024 (Ct. App. 2006).

In a methamphetamine trafficking case, evidence seized from defendant should have been suppressed as fruit of an illegal detention as the officers did not have a reasonable and articulable suspicion that defendant was involved in criminal activity prior to detaining him based on vague anonymous phone call to police dispatch. State v. Zapata-Reyes, 144 Idaho 703, 169 P.3d 291 (Ct. App. 2007).

In his challenge to the finding of reasonable suspicion, defendant argued that a border patrol agent did not verify that the vehicle he was stopping was the same one that had crossed the border that morning; however, the trial court's finding that the vehicle observed by the agent matched the vehicle described to him by an inspector was supported was substantial evidence. State v. Bordeaux, 148 Idaho 1, 217 P.3d 1 (Ct. App. 2009).

Probationers.

Where defendant had signed consent to search form as condition of probation, had probation revoked, and then reinstated without signing consent form, he was deemed not to have consented to warrantless search by probation officer. However, even without consent, the search was not in violation of defendant's rights, as his expectation of privacy was reduced as a probationer, and as long as there were reasonable grounds, probation officer was justified in conducting warrantless search. State v. Klingler, 143 Idaho 494, 148 P.3d 1240 (2006).

Where defendant delivered methamphetamine to an informant while he was serving probation, the search of his girlfriend's vehicle while he was riding as a passenger did not violate his rights under this section. The government's substantial interest in supervising probationers outweighed his diminished expectation of privacy in his girlfriend's car; defendant was not entitled to suppress evidence of $2,910 and 50.8 grams of methamphetamine found in the vehicle. State v. Adams, 146 Idaho 162, 191 P.3d 240 (Ct. App. 2008).

Protective Frisk.

During a traffic stop of a vehicle driven by defendant, a police officer found a number of unused syringes in defendant's pocket and a small amount of methamphetamine, another syringe, and other paraphernalia in the vehicle; defendant was not permitted to suppress the evidence as the frisk was justified by officer safety. State v. Martin, 146 Idaho 357, 195 P.3d 716 (Ct. App. 2008).

Protective Sweeps.

Where the police were executing a search of defendant's trailer and noticed two other men exiting a "rock building" on the premises, the ensuing protective sweep of the rock house was lawful because they had a reasonable, articulable suspicion that the building might harbor individuals posing a danger because the people present were suspected of drug activity, persons involved in drug activity often carried guns, the rock house was proximate to the place to be searched, and the police saw multiple vehicles on the premises, suggesting that more people were somewhere on the property. State v. Rojas-Tapia, 151 Idaho 479, 259 P.3d 625 (Ct. App. 2011).

Rental Vehicle.

Because he was not an authorized user under the rental agreement, defendant lacked standing to challenge an inventory search of rental vehicle from which he had fled after being stopped for speeding. The totality of the circumstances did not indicate that defendant had any reasonable expectation of privacy in the vehicle. State v. Cutler, 144 Idaho 272, 159 P.3d 909 (Ct. App. 2007).

Search.

—Automobile.

Defendant was not entitled to suppress evidence of a controlled substance seized during a traffic stop of a vehicle in which he was a passenger. The officer was justified in stopping the vehicle when he observed a violation of Idaho's seatbelt law. State v. Roe, 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004).

Valid detention of defendant became a consensual encounter at the point when defendant was told that he could leave. When defendant's driver's license and other documents were returned to him, he was told at least twice that he was free to leave, after defendant had returned to his car to depart the officer asked politely for permission to ask defendant a question, and it followed that the subsequent consent to a search occurred during a consensual encounter and was not the product of an unlawful detention, as the offi-

cer did not command defendant to stay, nor preface his request with any other comments that would suggest a continuing exercise of authority. State v. Roark, 140 Idaho 868, 103 P.3d 481 (Ct. App. 2004).

Search of defendant's purse, which was voluntarily left in a vehicle, did not violate her rights to be free from unlawful searches and seizures because a lawful custodial arrest justified the infringement of any privacy interest she had in the purse. State v. Watts, 142 Idaho 230, 127 P.3d 133 (2005).

Warrantless vehicle search did not violate this section, because the officer had reasonable suspicion that the man and woman riding in the vehicle were associated with a large quantity of drugs found outside a truck stop's bathrooms, the man had an outstanding felony drug warrant, and the woman matched the description of the only customer in the store between the time that the employee cleaned the store and when she discovered drugs on the floor. State v. Johnson, — Idaho —, 266 P.3d 1161 (Ct. App. 2011).

—Exceeding Scope of Warrant.

Officers did not exceed the scope of the warrant by searching defendant's apartment where (1) the officer's affidavit presented sufficient evidence to give rise to a belief that evidence of the theft would be located either on defendant or inside his apartment; (2) both the affidavit and the search warrant listed the address of defendant's apartment and described its appearance and location; (3) the officer's affidavit requested a warrant to search defendant's apartment and made no references to a car other than an unknown vehicle; (4) commanding a search of an unknown vehicle contradicted the rest of the warrant; and (5) use of the word "vehicle" instead of "residence" in the warrant was obviously a technical error, which would not automatically invalidate the warrant. State v. Teal, 145 Idaho 985, 188 P.3d 927 (Ct. App. 2008).

—Pat-down.

Police officer did not act outside the scope of a *Terry* stop and frisk by shaking the waistband of defendant's pants following defendant's attempt to conceal some item on his person where the officer's decision was a measured protective response to the facts available to him, and the officer used the least intrusive means available, shaking defendant's waistband, to ensure his and another officer's safety. State v. Greene, 140 Idaho 605, 97 P.3d 472 (Ct. App. 2004).

Defendant appealed from his conviction for possession of a controlled substance. Specifically, defendant challenged the district court's order denying his motion to suppress evidence. The appellate court stated that the officer did not violate defendant's constitutional right to be protected against unreasonable searches and seizures by conducting a pat-down search for weapons. However, because the officer intentionally removed items that could not have been weapons when it was unnecessary to do so in order to remove a toothpaste container, he acted unreasonably and not in a minimally intrusive fashion. Thus, the officer exceeded the scope of a pat-down search for weapons when he emptied defendant's pocket and defendant's motion to suppress should have been granted. The baggy of methamphetamine that the officer removed from defendant's pocket was therefore the fruit of an unreasonable search and should have been suppressed. State v. Watson, 143 Idaho 840, 153 P.3d 1186 (Ct. App. 2007).

In the absence of furtive or aggressive behavior or suspicious circumstances, defendant's act of returning his hands to his pockets on a cold night despite a police officer's contrary instruction did not create reasonable suspicion that defendant was armed and dangerous. Therefore, the officer's pat-down search of defendant was unlawful, and the evidence that it yielded had to be suppressed. State v. Davenport, 144 Idaho 99, 156 P.3d 1197 (Ct. App. 2007).

Search Incident to Arrest.

Motion to suppress evidence of drugs found during search incident to arrest for violation of local open container ordinance was properly denied, since police had probable cause to make the arrest. State v. Schmitt, 144 Idaho 768, 171 P.3d 259 (Ct. App. 2007).

Evidence of drug paraphernalia was not suppressible on the ground that the seizing officer illegally entered defendant's home because the officer did not derive this evidence from any exploitation of the unlawful entry; rather, it was found in a search incident to an arrest for battery of the officer and, thus, was not "fruit of the poisonous tree." State v. Lusby, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).

Search Warrants.

When a search warrant was issued for defendant's commercial building, if the address stated in the warrant was erroneous, the warrant was not invalid because it otherwise particularly described the building, so there was no risk that an officer executing the warrant, who was familiar with the building, would search the wrong property. State v. O'Keefe, 143 Idaho 278, 141 P.3d 1147 (Ct. App. 2006).

When a search of defendant's commercial building revealed evidence of a large-scale marijuana-growing operation, and the building was linked to defendant by the fact that he had rented it, owned several vehicles on the premises, and had utilities service to the

building in his name, a magistrate could reasonably infer that further evidence of defendant's drug trafficking would be found at his residence, so there was sufficient probable cause for a search warrant for that residence. State v. O'Keefe, 143 Idaho 278, 141 P.3d 1147 (Ct. App. 2006).

When there is a technical error or inadvertent error in a search warrant, a court analyzes whether the search exceeds the scope of the warrant based on an objective assessment of the circumstances surrounding the issuance of the warrant, the contents of the search warrant, and the circumstances of the search; however, the subjective state of mind of the officer executing the warrant is not material to the inquiry. A technical error will not automatically invalidate the warrant. State v. Teal, 145 Idaho 985, 188 P.3d 927 (Ct. App. 2008).

—In General.

Procedure followed in the case to obtain the search warrant did not violate this section where there was no authority supporting defendants' proposition that it required that an affidavit submitted in connection with an application for a search warrant had to be signed in the presence of the person issuing the warrant, and had the framers intended to exclude affidavits signed before a notary public from being used to obtain a search warrant, they would have drafted the constitution to do so. State v. Bicknell, 140 Idaho 201, 91 P.3d 1105 (2004).

—Probable Cause.

Where a controlled drug transaction took place at one location in a mobile home park, but a search of that location failed to find any marijuana, and the officer determined that the suspect lived in an adjoining space and obtained a search warrant for that space based solely on the residence of the suspect, the search of the adjoining space was invalid for lack of a nexus between the place to be searched and the item to be seized, and the evidence should have been suppressed. State v. Belden, 148 Idaho 277, 220 P.3d 1096 (Ct. App. 2009).

Seizure.

Under the Fourth Amendment and Idaho Const., Art. I, § 17, the district court's order granting defendant's motion to suppress was proper because a seizure, without a warrant or any exigent circumstances, occurred when a police officer opened the passenger door of the defendant's car and stood in the open doorway, preventing defendant from driving away. State v. Liechty, — Idaho —, 267 P.3d 1278 (Ct. App. 2011).

Standing.

State waived its argument that defendant lacked standing to contest an automobile search where its initial position was that defendant had consented to the search, which was inconsistent with its appellate position that defendant was not authorized to control the automobile. State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct. App. 2006).

Statements.

Statements made by a properly Mirandized defendant were admissible despite the fact that he had been arrested as the result of an illegal stop, because the three hour time lapse between the stop and the statements was sufficient to break their connection with the illegal stop. State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct. App. 2006).

Telephonic Warrant.

Where the officer applied for a search warrant by telephone and testified to information provided by confidential informants that defendant kept and used methamphetamines in her home and was involved in an organized theft operation, a telephonic warrant was issued by the magistrate and signed by the prosecuting attorney at the direction of a magistrate judge. The fact that the judge did not sign the warrant was procedural defect that did not rise to the level of a constitutional violation; the defect did not call into question the finding of probable cause to justify issuance of the warrant. State v. Zueger, 143 Idaho 647, 152 P.3d 8 (2006).

Traffic Stop.

Officer had reasonable suspicion to stop defendant's vehicle when he saw the taillights emitting white light, when red light was required by law, and defendant was not entitled to suppress the evidence obtained subsequent to the stop. State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004).

Trial court erred in denying defendant's motion to suppress evidence of contraband where the trial court based its determination that a police officer was justified in initiating the weapons search during a traffic stop upon a subjective feeling attributed to the officer rather than a determination as to whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. State v. Henage, 143 Idaho 655, 152 P.3d 16 (2007).

Collateral References. Validity of warrantless search of motor vehicle driver based on odor of marijuana — State cases. 123 A.L.R.5th 179.

Validity of search conducted pursuant to parole warrant. 123 A.L.R.5th 221.

Validity of warrantless search of motor vehicle passenger based on odor of marijuana. 1 A.L.R.6th 371.

Application of Leon good faith exception to exclusionary rule where police fail to comply

with knock and announce requirement during execution of search warrant. 2 A.L.R.6th 169.

Application in state narcotics cases of collective knowledge doctrine or fellow officers' rule under Fourth Amendment — Cocaine cases. 4 A.L.R.6th 599.

Application in state narcotics cases of collective knowledge doctrine or fellow officers' rule under Fourth Amendment — Drugs other than marijuana and cocaine and unidentified drugs. 12 A.L.R.6th 553.

Construction and application of rule permitting knock and talk visits under Fourth Amendment and state constitutions. 15 A.L.R.6th 515.

When is warrantless entry of house or other building justified under "hot pursuit" doctrine. 17 A.L.R.6th 327.

Employee's expectation of privacy in workplace. 18 A.L.R.6th 1.

Expectation of privacy in text transmissions to or from pager, cellular telephone, or other wireless personal communications device. 25 A.L.R.6th 201.

Timeliness of execution of search warrant. 27 A.L.R.6th 491.

Hospital as within constitutional provision forbidding unreasonable searches and seizures. 28 A.L.R.6th 245.

Application in state narcotics cases of collective knowledge doctrine or fellow officers' rule under Fourth Amendment — Marijuana cases. 35 A.L.R.6th 497.

Validity of search of cruise ship cabin. 43 A.L.R.6th 355.

Validity of search and reasonable expectation of privacy as affected by no trespassing or similar signage. 45 A.L.R.6th 643.

Construction and application of "automatic companion rule" or person's "mere propinquity" to arrestee to determine propriety of search of person for weapons or firearms. 47 A.L.R.6th 423.

Construction and application of consent-once-removed doctrine, permitting warrantless entry into residence by law enforcement officers for purposes of effectuating arrest or search where confidential informant or undercover officer enters with consent and observes criminal activity or contraband in plain view. 50 A.L.R.6th 1.

Sufficiency of showing to support no-knock search warrant — Cases decided after *Richards v. Wisconsin,* 520 U.S. 385, 117 S. Ct. 1416, 137 L. Ed. 2d 615 (1997). 50 A.L.R.6th 455.

Construction and application of supreme court's holding in *Arizona v. Gant*, 129 S. Ct. 1710, 173 L. Ed. 2d 485, 47 A.L.R. Fed. 2d 657 (2009), that police may search vehicle incident to recent occupant's arrest only if arrestee is within reaching distance of passenger compartment at time of search or it is reasonable to believe vehicle contains evidence of offense — Substantive traffic offenses. 55 A.L.R.6th 1.

Construction and application of supreme court's holding in *Arizona v. Gant,* 129 S. Ct. 1710, 173 L. Ed. 2d 485, 47 A.L.R. Fed. 2d 657 (2009), that police may search vehicle incident to recent occupant's arrest only if arrestee is within reaching distance of passenger compartment at time of search or it is reasonable to believe vehicle contains evidence of offense — Pretextual traffic offenses and other criminal investigations. 56 A.L.R. 6th 1.

Necessity of rendering medical assistance as circumstance permitting warrantless entry or search of building or premises. 58 A.L.R. 6th 499.

Propriety of execution of no-knock search warrant. 59 A.L.R. 6th 311.

Validity of search of wireless communication devices. 62 A.L.R. 6th 161.

Search and seizure: reasonable expectation of privacy in backyards. 62 A.L.R. 6th 413.

Sufficiency of information provided by confidential informant, whose identity is known to police, to provide probable cause for federal search warrant where there was indication that informant provided reliable information to police in past — Cases decided after *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). 196 A.L.R. Fed. 1.

Sufficiency of information provided by confidential informant, whose identity is known to police, to provide probable cause for federal search warrant where there was no indication that informant provided reliable information to police in past — Cases decided after *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). 9 A.L.R. Fed. 2d 1.

When are facts offered in support of search warrant for evidence of federal drug offense so untimely as to be stale. 13 A.L.R. Fed. 2d 1.

Allowable use of federal pen register and trap and trace device to trace cell phones and internet use. 15 A.L.R. Fed. 2d 537.

First amendment protection for members of military subjected to discharge, transfer, or discipline because of speech. 40 A.L.R. Fed. 2d 229.

Application of first amendment's "ministerial exception" or "ecclesiastical exception" to federal civil rights claims. 41 A.L.R. Fed. 2d 445.

Claims of ineffective assistance of counsel in death penalty proceedings — United States supreme court cases. 31 A.L.R. Fed. 2d 1.

Construction and application of sixth amendment right to counsel — Supreme court cases. 33 A.L.R. Fed. 2d 1.

Adequacy of defense counsel's representation of criminal client regarding entrapment defense — Federal cases. 42 A.L.R. Fed. 2d 145.

Validity and application of anticipatory search warrant — Federal cases. 31 A.L.R. Fed. 2d 123.

Unconstitutional search or seizure as warranting suppression of evidence in removal proceeding. 40 A.L.R. Fed. 2d 489.

Border search or seizure of traveler's laptop computer, or other personal electronic or digital storage device. 45 A.L.R. Fed. 2d 1.

Application of fourth amendment to automobile searches — Supreme court cases. 47 A.L.R. Fed 2d 197.

§ 18. Justice to be freely and speedily administered.

Cited in: Venters v. Sorrento Del., Inc., 141 Idaho 245, 108 P.3d 392 (2005).

Court Access.

Denial of an employee's claim for psychological reaction without an accompanying physical injury, did not violate her rights under Idaho Const. art. 1, §§ 2 and 18. Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P.3d 448 (2004).

§ 22. Rights of crime victims.

Cited in: State v. Korsen, 141 Idaho 445, 111 P.3d 130 (2005).

Analysis

Right to address court.
Rights of defendant.
Victim impact statement.

Right to Address Court.

Because the record did not support the conclusion that the victim's mother was presenting testimony at sentencing at the initiative of or on behalf of the state, the court was unable to conclude that the prosecutor acted contrary to the provisions of the plea agreement where defendant pleaded guilty to aggravated assault in violation of §§ 18-901 and 18-905. Under subsection (6) of this section and § 19-5306(1)(e), crime victims were guaranteed the right to be heard upon request at sentencing hearings, and the state had informed the trial court that the mother wanted to address the court on behalf of the victim, and the trial court allowed the statement as a victim impact statement, and the issue of whether the trial court erred in allowing the mother to give such a statement was not preserved for review. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Rights of Defendant.

Where defendant was found guilty of murder, the appellate court declined to apply a harmless error analysis and remand the case for resentencing with directions to the trial court to exclude victim impact statements calling for the death penalty, or other information that did not comply with *Booth*, and *Payne*, in order not to violate the Eighth Amendment. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Subsequent to the decision in *Payne*, this section was added to Article I of the Idaho Constitution guaranteeing rights to crime victims, and subsection (6) provides that a crime victim has the right "to be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result," language identical to that found in § 19-5306(1)(e). State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Victim Impact Statement.

DVD presentation containing photographic and video images of the victim and her family at the sentencing hearing was proper as it was a valid exercise of the victim's right to be heard and did not result in a manifest injustice. State v. Leon, 142 Idaho 705, 132 P.3d 462 (Ct. App. 2006).

Defendant failed to demonstrate that a district court erred in its use of a victim impact statement in a presentence investigation report. District court ruled that the statement was admissible only as victim input and then set forth multiple reasons for defendant's sentence based on the proper sentencing factors. State v. Deisz, 145 Idaho 826, 186 P.3d 682 (Ct. App. 2008).

When police officers were injured in the attempt to take defendant's husband into custody, defendant pled guilty to harboring and protecting a felon. At sentencing, the injured officers were properly allowed to give victim impact statements under this provision, § 19-5306(1)(e), and Idaho Crim. R. 32(b)(1); the officers were the victims of defendant's crime of harboring and protecting her husband. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

§ 23. The rights to hunt, fish and trap. [Proposed enactment.] — The rights to hunt, fish and trap, including by the use of traditional methods, are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping. Public hunting, fishing and trapping of wildlife shall be a preferred means of managing wildlife. The rights set forth herein do not create a right to trespass on private property, shall not affect rights to divert, appropriate and use water, or establish any minimum amount of water in any water body, shall not lead to a diminution of other private rights, and shall not prevent the suspension or revocation, pursuant to statute enacted by the Legislature, of an individual's hunting, fishing or trapping license.

Proposed Enactment. 2012 House Joint Resolution No. 2, proposes to amend the constitution of the state of Idaho by adding this section, which will be submitted to the electors of the state at the November 2012 general election.

Article II

DISTRIBUTION OF POWERS

§ 1. Departments of government.

Cited in: Idaho Press Club, Inc. v. State Legislature, 142 Idaho 640, 132 P.3d 397 (2006).

ANALYSIS

Pardon or parole.
Separation of powers.

Pardon or Parole.

Section 20-228 did not violate the separation of powers where the legislature had the authority of establishing suitable punishment for various crimes; the legislative pronouncement that an inmate had to be subject to forfeiture of time spent on parole was an exercise of the legislative power to define crimes and their penalties and did not involve resentencing inmates. Gibson v. Bennett, 141 Idaho 270, 108 P.3d 417 (Ct. App. 2005).

Separation of Powers.

Whether or not the Idaho judicial council member's appointment violated § 1-2101(1) was an issue that the senate could, and did, debate prior to his confirmation vote; it would violate the separation of powers for the appellate court to substitute its view for that of the senate regarding whether the member was qualified to be appointed to the judicial council. Troutner v. Kempthorne, 142 Idaho 389, 128 P.3d 926 (2006).

Article III

LEGISLATIVE DEPARTMENT

SECTION.
28. Marriage.

§ 1. Legislative power — Enacting clause — Referendum — Initiative.

Cited in: Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009).

Initiative Power.

Pursuant to this section and § 50-501, coalition's petition for an initiative election demanding enactment of an ordinance for a Ten Commandments display to be placed in a park qualified for the ballot for consideration by the voters; the supreme court could not interrupt the consideration of a properly qualified initiative. City of Boise City v. Keep the

Commandments Coalition (In re Initiative Petition for a Ten Commandments Display), 143 Idaho 254, 141 P.3d 1123 (2006).

Collateral References. Validity of super-majority voting requirements in constitutional, statutory, and other public provisions. 28 A.L.R.6th 439.

§ 2. Membership of House and Senate.

Apportionment.

Reapportionment under which the total maximum population deviation was 9.71% was presumptively constitutional, and challengers of plan failed to demonstrate that the deviation resulted from any unconstitutional or irrational state purpose which would overcome this presumption. Idaho Legislative Reapportionment Plan of 2002 v. Ysursa, 142 Idaho 464, 129 P.3d 1213 (2005).

§ 4. Apportionment of legislature.

Cited in: Idaho Legislative Reapportionment Plan of 2002 v. Ysursa, 142 Idaho 464, 129 P.3d 1213 (2005).

§ 5. Senatorial and representative districts.

Division of Counties.

Reapportionment under which the total maximum population deviation was 9.71% was presumptively constitutional, and challengers of plan failed to demonstrate that the deviation resulted from any unconstitutional or irrational state purpose which would overcome this presumption. Idaho Legislative Reapportionment Plan of 2002 v. Ysursa, 142 Idaho 464, 129 P.3d 1213 (2005).

§ 9. Powers of each house.

Cited in: Idaho Press Club, Inc. v. State Legislature, 142 Idaho 640, 132 P.3d 397 (2006).

§ 10. Quorum, adjournments and organization.

Cited in: Idaho Press Club, Inc. v. State Legislature, 142 Idaho 640, 132 P.3d 397 (2006).

§ 12. Secret sessions prohibited.

Open Meetings.

This section does not apply to legislative committee meetings. Idaho Press Club, Inc. v. State Legislature, 142 Idaho 640, 132 P.3d 397 (2006).

§ 14. Origin and amendment of bills.

Standing.

Citizen lacked standing to challenge the cigarette tax since he had a "generalized grievance" shared by a large class of citizens, and his remedy was through the political process. Further, the sales and use tax bill originated in the Idaho house and although substantially amended in the Idaho senate, it was constitutionally enacted. Gallagher v. State, 141 Idaho 665, 115 P.3d 756 (2005).

§ 16. Unity of subject and title.

Analysis

Partial invalidity.
Titles.
—Sufficient.

Partial Invalidity.

Section 60-106 was judged to be constitutional as it applied to governmental entities, but unconstitutional and void in regard to non-governmental entities because the statute referred to governmental entities in its title, but referred to non-governmental entities in the statute itself. Federated Publ'ns, Inc. v. Idaho Bus. Review, Inc., 146 Idaho 207, 192 P.3d 1031 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Titles.

—Sufficient.

Section § 50-219 did not violate the unity requirement of this section because its title encompassed the subject matter of damage claims against cities and served to fairly identify the content of the act. Cox v. City of Sandpoint, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003).

§ 19. Local and special laws prohibited.

Analysis

Constitutionality.
Legislative classifications.
Worker's compensation.

Constitutionality.

Immunity provision found at former § 22-4803A(6) [now see §§ 39-114 and 52-108] does not effect a taking in violation of the Fifth Amendment of the United States Constitution or Idaho Const. art. I, § 14. It also does not violate Idaho Const. art. I, § 1 or the prohibition against local or special laws found in this section. The statute is constitutional. Moon v. N. Idaho Farmers Ass'n, 140 Idaho 536, 96 P.3d 637 (2004), cert. denied, 543 U.S. 1146, 125 S. Ct. 1299, 161 L. Ed. 2d 106 (2005).

Legislative Classifications.

House Bill 403 of the 2003 Idaho legislative session, as it amended § 6-2215, violated this section because the language of the bill was aimed at essentially disbanding a group's education case against the state and restructuring it in a manner that destroyed the group's cause of action, and was clearly a special law. Further, the legislation directly contradicted Idaho court procedure and effectively dismissed parties to a pending lawsuit without any court action, and there was no necessity present pursuant to Idaho Const. art. V, § 13 meriting the legislature's attempt to legislate itself out of the lawsuit by rewriting the Idaho Rules of Civil Procedure. Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004).

Worker's Compensation.

Requirement that an employee suffering an accident had to timely notify the employer, even if that employee was unaware of the extent of the personal injury caused by the accident, was not a special law prohibited by this section, because this section applies to all persons and subject matters in a like situation. Arel v. T & L Enters., 146 Idaho 29, 189 P.3d 1149 (2008).

§ 20. Gambling prohibited.

Analysis

Applicability.
Indian gaming.
Licensing operation.

Applicability.

To give effect to this provision, which prohibits, in part, electromechanical imitation or simulation of any form of casino gambling, the Idaho legislature enacted § 18-3810 to make it a misdemeanor to use or keep a slot machine. The term "slot machine" is sufficiently clear to include video gaming machines. Knox v. United States DOL, 759 F. Supp. 2d 1223 (D. Idaho 2010).

Indian Gaming.

Sections 67-429B and 67-429C are constitutional; the decision in *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), regarding whether video gaming machines were permitted on an Indian reservation, was final, and res judicata in any further litigation as to whether tribal video gaming is permissible. Knox v. State Ex Rel. Otter, 148 Idaho 324, 223 P.3d 266 (2009).

Licensing Operation.

Idaho lottery commission (commission) did not abuse its discretion in determining that the nonprofit organizations failed to keep and account for all checks; instead of keeping or

obtaining and producing the underlying records needed to fulfill the duty of scrutiny, the organizations told the commission to fetch the records at the commission's expense. Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n, 144 Idaho 23, 156 P.3d 524 (2007).

Collateral References. Preemption of state law by Indian Gaming Regulatory Act. 27 A.L.R. Fed. 2d 93.

§ 26. Power and authority over intoxicating liquors.

Control of Sale of Liquor.

District court erred in holding that § 23-615 was facially unconstitutional for overbreadth, as selling alcohol is not constitutionally protected conduct under U.S. Const. amend. XXI, § 2 and this section. Alcohol Bev. Control v. Boyd, 148 Idaho 944, 231 P.3d 1041 (2010).

§ 28. Marriage. — A marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state.

Compiler's Notes. This section was proposed as an amendment to the Idaho Constitution by House Joint Resolution No. 2 (2006). House Joint Resolution No. 2 was adopted by the electorate at the general election of November 7, 2006.

Article IV

LEGISLATIVE DEPARTMENT

§ 7. The pardoning power.

Limitation.

Defendant's pardon under this section and § 20-240 was not a complete removal of the conviction from defendant's record, allowing a later court to include that conviction while calculating the defendant's criminal history. United States v. Bays, 589 F.3d 1035 (9th Cir. 2009).

§ 18. Board of examiners.

Cited in: State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Article V

JUDICIAL DEPARTMENT

§ 2. Judicial power — Where vested.

Cited in: Hudelson v. Delta Int'l Mach. Corp., 142 Idaho 244, 127 P.3d 147 (2005).

§ 9. Original and appellate jurisdiction of Supreme Court.

Cited in: Harris v. Elec. Wholesale, 141 Idaho 1, 105 P.3d 267 (2004); Ryder v. Idaho PUC (In re Ryder), 141 Idaho 918, 120 P.3d 736 (2005); McNeal v. Idaho PUC, 142 Idaho 685, 132 P.3d 442 (2006); Jenkins v. Barsalou, 145 Idaho 202, 177 P.3d 949 (2008); Fife v. Home Depot, Inc., 151 Idaho 509, 260 P.3d 1180 (2011).

Analysis

Attorney's fees.
Declaratory judgments.
Industrial Commission.
Prohibition.

Attorney's Fees.

Employee was not the prevailing party on

appeal and therefore was not entitled to an award of attorney fees and costs. Henderson v. Eclipse Traffic Control & Flagging, Inc., 147 Idaho 628, 213 P.3d 718 (2009).

Declaratory Judgments.

Grant of attorney fees as the result of a frivolous appeal was appropriate when an employee sought judicial review of a county board of commissioners' decision to affirm termination, yet there was no statute that provided for judicial review of this type of decision. Also, the employee sought a declaratory judgment from the supreme court, which the supreme court lacked jurisdiction to issue. Gibson v. Ada County, 142 Idaho 746, 133 P.3d 1211, cert. denied, 549 U.S. 994, 127 S. Ct. 496, 166 L. Ed. 2d 366 (2006).

Industrial Commission.

In review of an appeal from the industrial commission, the commission's conclusions of law are freely reviewed by the supreme court, and its findings of fact will be upheld if they are supported by substantial and competent evidence in the record, evidence which a reasonable mind might accept such evidence as adequate and sufficient to support a conclusion. Smith v. J.B. Parson Co., 127 Idaho 937, 908 P.2d 1244 (1996).

Court refused to overturn determination of industrial commission that worker was not entitled to unemployment benefit because he was discharged for misconduct, where worker presented no new questions of law, but merely attempted to attack the credibility of witnesses against him. Huff v. Singleton, 143 Idaho 498, 148 P.3d 1244 (2006).

Prohibition.

State was not entitled to a writ of prohibition to enjoin a district court from assessing fees for a special master against the state because the appointment of special masters and the assessment of special master costs were matters within the discretion of the district courts. Clear statutory authority existed for the award of such fees, as well direction as to how costs awarded against the State were to be paid. State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

§ 10. Jurisdiction over claims against the state.

Cited in: State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

§ 13. Power of legislature respecting courts.

Cited in: State v. Toyne, 151 Idaho 779, 264 P.3d 418 (Ct. App. 2011).

Unauthorized Legislative Power.

House Bill 403 of the 2003 Idaho legislative session, as it amended § 6-2215, violated Idaho Const. art. III, § 19 because the language of the bill was aimed at essentially disbanding a group's education case against the state and restructuring it in a manner that destroyed the group's cause of action, and was clearly a special law. Further, the legislation directly contradicted Idaho court procedure and effectively dismissed parties to a pending lawsuit without any court action, and there was no necessity present pursuant to this section meriting the legislature's attempt to legislate itself out of the lawsuit by rewriting the Idaho Rules of Civil Procedure. Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004).

§ 18. Prosecuting attorneys — Term of office — Qualifications.

As Judicial Officer.

While the Industrial Commission was a state agency, the county prosecutor represented the sovereign in the criminal proceeding in accordance with Idaho Const., Art. V, § 18, not any individual state agency. Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011).

§ 20. Jurisdiction of district court.

Cited in: Jenkins v. Barsalou, 145 Idaho 202, 177 P.3d 949 (2008); Troupis v. Summer, 148 Idaho 77, 218 P.3d 1138 (2009).

ANALYSIS

Evidence of value.
Jurisdiction in general.
Original jurisdiction.
Quiet title action.

Evidence of Value.

Landowners did not prove their own property appraisal, or any of their own

comparables, to substantiate their claim that their property was overvalued, to suggest that the assessor did not locate enough comparables, or to show that the ones chosen were inappropriate. City of Eagle v. Idaho Dep't of Water Res., 150 Idaho 449, 247 P.3d 1037 (2011).

Jurisdiction in General.

District court acquired subject matter jurisdiction over defendant when the state filed the criminal complaint, and although the district court erred in believing it had a valid warrant for defendant's arrest in that no warrant had been issued on April 25, 1994, or at any time thereafter, the district court had no intention of relinquishing jurisdiction and postponed sentence for a proper purpose, to have defendant in custody or amenable to the process of the court. State v. Rogers, 140 Idaho 223, 91 P.3d 1127 (2004).

In a petition for post-conviction relief, because § 19-2719 is a statute of limitations rather than a jurisdictional bar, subsection (5) of § 19-2719 does not violate the state constitution's separation of powers provisions in Idaho Const., art. V, § 13 and this section. Stuart v. State, 149 Idaho 35, 232 P.3d 813 (2010), cert. denied, — U.S. —, 131 S. Ct. 1472, 179 L. Ed. 2d 313 (2011).

Original Jurisdiction.

Order denying defendant's motion for reduction of sentence was upheld where defendant presented no new or additional evidence in support of the motion. The trial court acted within a reasonable time in ruling on the motion and had not lost original jurisdiction when it issued the order denying the motion. State v. Shumway, 144 Idaho 580, 165 P.3d 294 (Ct. App. 2007).

Quiet Title Action.

District court had jurisdiction over a quiet title action because both parties submitted to personal jurisdiction by filing pleadings, and the district court had original jurisdiction to hear all cases, both at law and in equity. Bach v. Miller, 144 Idaho 142, 158 P.3d 305 (2007).

Article VI

SUFFRAGE AND ELECTIONS

§ 3. Disqualification of certain persons.

Collateral References. Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

Article VII

FINANCE AND REVENUE

SECTION.

§ 2. Revenue to be provided by taxation.

Cited in: Halper v. Jerome County, 143 Idaho 691, 152 P.3d 562 (2007); Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010).

Intoxicating Liquors.

A municipality may not adopt an ordinance which makes the possession of an open container of alcohol by a passenger within a motor vehicle a misdemeanor, when the state has a statute making such possession an infraction. State v. Reyes, 146 Idaho 778, 203 P.3d 708 (Ct. App. 2008).

§ 4. Public property exempt from taxation.

Public Property.

Because a city's stormwater charge served the non-regulatory purpose of raising revenue for cleaning, maintaining, and expanding the city's streets and stormwater infrastructure, it was not a fee incidental to regulation and enacted pursuant to the city's police powers under Idaho Const., Art. XII, § 2. Rather, it was an unlawful revenue-generating tax, lacking legislative authorization under Idaho Const., Art. VII, § 6, and its imposition on governmental entities was barred by this sec-

tion. Lewiston Indep. Sch. Dist. #1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).

§ 5. Taxes to be uniform — Exemptions.

Analysis

Conflicting assessments.
Double taxation.
Irrigation districts.

Conflicting Assessments.

Costs and attorney fees were awarded to a taxpayer in an appeal from a county assessor's decision to assess property as non-operating after it had already been assessed as operating by the Idaho tax commission because there was no reasonable basis for the decision to include the real property on the tax rolls under § 63-311. The assessment amounted to double taxation. Union Pac. Land Res. Corp. v. Shoshone County Assessor, 140 Idaho 528, 96 P.3d 629 (2004).

Double Taxation.

An order issued by a district court under § 1-2218, requiring a city to provide suitable and adequate quarters for a magistrate division of the district court, did not impose a tax or raise general revenue and, thus, did not implicate the prohibition in this section against duplicative and non-uniform taxes. City of Boise v. Ada County (In re Facilities & Equip. Provided by the City of Boise), 147 Idaho 794, 215 P.3d 514 (2009).

Irrigation Districts.

Under this section, as long as the connection fees for the delivery of domestic and irrigation water conform to the statutory scheme set forth in the Irrigation District Domestic Water System Revenue Bond Act, §§ 43-1907 to 43-1920 and are allocated and budgeted in conformity with that act, they are not taxes; whether or not they conform to the statutory scheme and are allocated and budgeted in conformity with the act are issues of fact. Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

§ 6. Municipal corporations to impose their own taxes.

Analysis

Construction.
Irrigation districts.

Construction.

Because a city's stormwater charge served the non-regulatory purpose of raising revenue for cleaning, maintaining, and expanding the city's streets and stormwater infrastructure, it was not a fee incidental to regulation and enacted pursuant to the city's police powers under Idaho Const., Art. XII, § 2. Rather, it was an unlawful revenue-generating tax, lacking legislative authorization under this section, and its imposition on governmental entities was barred by Idaho Const., Art. VII, § 4. Lewiston Indep. Sch. Dist. #1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).

Irrigation Districts.

District court did not err in holding that the irrigation district was exercising its proprietary function when it imposed a water connection fee. Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

§ 12. State tax commission, members, terms, appointment, vacancies, duties, powers — County boards of equalization, duties.

Cited in: Union Pac. Land Res. Corp. v. Shoshone County Assessor, 140 Idaho 528, 96 P.3d 629 (2004).

§ 13. Money — How drawn from treasury.

Cited in: State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

§ 18. Idaho millennium permanent endowment fund — Idaho millennium income fund — Idaho millennium fund. — There is hereby created in the state treasury an Idaho Millennium Permanent Endowment Fund. The fund shall consist of eighty percent of the moneys received each year by the state of Idaho on and after January 1, 2007, pursuant to the master settlement agreement entered into between tobacco product manufacturers and the state of Idaho, and any other moneys that may be appropriated or otherwise directed to the fund by the legislature, including other moneys or assets that the fund receives by bequest or private donation. The moneys received annually for deposit to the fund, including earnings, shall forever remain inviolate and intact. No portion of the permanent endowment fund shall ever be transferred to any other fund, or used, or appropriated, except as follows: each year, the state treasurer shall distribute five percent of the permanent endowment fund's average monthly fair market value for the first twelve months of the preceding twenty-four months, to the Idaho Millennium Income Fund, and provided, that such distribution shall not exceed the permanent endowment fund's fair market value on the first business day of July.

The Idaho Millennium Income Fund, which is hereby created in the state treasury, is subject to appropriation as provided by law, and shall consist of the distribution from the Idaho Millennium Permanent Endowment Fund and other moneys that may be appropriated or otherwise directed to the fund as provided by law.

The remaining twenty percent of the moneys received by the state of Idaho on and after January 1, 2007, pursuant to the master settlement agreement entered into between tobacco product manufacturers and the state of Idaho and the earnings thereon, shall be deposited to the Idaho Millennium Fund. The fund may consist of any other moneys that may be appropriated or otherwise directed to the fund by the legislature, including other moneys or assets that the fund receives by bequest or private donation. Moneys in the fund shall be allowed to accumulate, but shall not exceed a maximum limit as determined by law. Any amounts so accumulating in the Idaho Millennium Fund which exceed the maximum limit, shall be transferred, no less than once a year, to the Idaho Millennium Permanent Endowment Fund, and such moneys and earnings in the permanent endowment fund shall also remain inviolate and intact.

Compiler's Notes. This section was proposed as an amendment to the Idaho Constitution by Senate Joint Resolution 107 (2006). Senate Joint Resolution No. 107 was adopted by the electorate at the general election of November 7, 2006.

Article VIII

PUBLIC INDEBTEDNESS AND SUBSIDIES

§ 2. Loan of state's credit prohibited — Holding stock in corporation prohibited — Development of water power.

Collateral References. State or local governmental body's action or inaction, in provision of public utility services, benefiting private company as constituting gift of money, or pledge of credit, to private party in violation of state constitutional provision. 122 A.L.R.5th 337.

§ 3. Limitations on county and municipal indebtedness.

Cited in: Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010).

ANALYSIS

Multi-year power agreement.
Ordinary and necessary expenses.
Payment of judgment.
Redevelopment agencies.
Standing to bring suit.

Multi-Year Power Agreement.

Municipal utility's 17-year power sales agreement with the U.S. department of energy constitutes a liability exceeding the income and revenue provided for that liability in the year in which it was incurred, did not receive the assent of two-thirds of the qualified voting electorate, and did not fit into the exception to this voting requirement under the proviso clause and is, therefore, invalid. City of Idaho Falls v. Fuhriman (In re Validity of the Power Sales Agreement), 149 Idaho 574, 237 P.3d 1200 (2010).

Ordinary and Necessary Expenses.

District court erred in determining that a city's plan to incur long term indebtedness for an airport parking expansion was an ordinary and necessary expense on the basis that adequate parking facilities were critical to the operation of the airport. The constitutional requirement to submit such an issue to the electorate cannot not be avoided unless the expenditure is so urgent that it must be made during the current year. City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006).

District court erred in determining that a city's plan to incur long term indebtedness for an airport parking expansion was an ordinary and necessary expense on the basis that it was merely repair or improvement of existing facilities. Converting a flat parking lot into a five floor parking garage did not constitute a mere repair or improvement and was such a profound expansion as to constitute an entirely new construction in every meaningful sense. City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006).

Payment of Judgment.

As § 31-604 grants a county the right to sue and be sued, it is reasonable to conclude that a county's payment of a judgment arising from a lawsuit in which the county is involved was consistent with the ordinary course of municipal business; a county's payment of such a judgment, thus, would be an "ordinary" and "necessary" expenditure within the meaning of § 31-1608, would not be proscribed by § 31-1607, and would not violate this section. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

Redevelopment Agencies.

Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho Const., art. VIII, § 4 or this section, because the agencies were not the alter egos of cities. Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).

Standing to Bring Suit.

If a taxpayer had standing to challenge a congressional appropriation that violated a specific constitutional limitation upon the congressional taxing and spending power, then there was no logical difference between making an appropriation that was specifically prohibited by the constitution and incurring an indebtedness or liability that was specifically prohibited by the constitution; thus, plaintiff taxpayers, who were electors and taxpayers of a county, had standing to challenge whether a lease agreement entered into by defendant county violated this section. Although the taxpayers had standing, the lease agreement no longer existed because the county had purchased and sold the property at issue, the matter was moot, and none of the exceptions to the mootness doctrine applied. Koch v. Canyon County, 145 Idaho 158, 177 P.3d 372 (2008).

§ 3C. Hospitals and health services — Authorized activities and financing. — Provided that no ad valorem tax revenues shall be used for activities authorized by this section, public hospitals, ancillary to their operations and in furtherance of health care needs in their service areas, may: (i) incur indebtedness or liability to purchase, contract, lease or construct or otherwise acquire facilities, equipment, technology and real property for health care operations as provided by law; (ii) acquire, construct, install and equip facilities or projects to be financed for, or to be leased, sold or otherwise disposed of to persons, associations or corporations other than municipal corporations and may, in the manner prescribed by law, finance the costs thereof; (iii) engage in shared services and other joint or cooperative ventures; (iv) enter into joint ventures and partnerships; (v) form or be a shareholder of corporations or a member of limited liability companies; (vi) have members of its governing body or its officers or administrators serve as directors, managers, officers or employees of any venture, association, partnership, corporation or limited liability company as authorized by this section; (vii) own interests in partnerships, corporations and limited liability companies. Any obligations incurred pursuant to this section shall be payable solely from charges, rents or payments derived from the existing facilities and the facilities or projects financed thereby and shall not be secured by the full faith and credit or the taxing power of the county, hospital taxing district, the state, or any other political subdivision; and provided further, that any county or public hospital taxing district contracting such indebtedness shall own its just proportion to the whole amount so invested. The authority granted by this section shall be exercised for the delivery of health care and related service and with the prior approval of the governing body of the county, hospital district or other governing body of a public hospital. No provisions of this Constitution including, but not limited to Sections 3 and 4 of Article VIII, and Section 4 of Article XII, shall be construed as a limitation upon the authority granted under this section.

Compiler's Notes. The section was added to Article VIII by S.J.R. 111 (S.L. 1996, p. 1473) and ratified at the general election November 5, 1996, to read as follows: "**Hospitals and health services — Authorized activities and financing.** — Provided that no ad valorem tax revenues shall be used for activities authorized by this section, public hospitals, ancillary to their operations and in furtherance of health care needs in their service areas, may: (i) acquire, construct, install and equip facilities or projects to be financed for, or to be leased, sold or otherwise disposed of to persons, associations or corporations other than municipal corporations and may, in the manner prescribed by law, finance the costs thereof; (ii) engage in shared services and other joint or cooperative ventures; (iii) enter into joint ventures and partnerships; (iv) form or be a shareholder of corporations or a member of limited liability companies; (v) have members of its governing body or its officers or administrators serve as directors, managers, officers or employees of any venture, association, partnership, corporation or limited liability company as authorized by this section; (vi) own interests in partnerships, corporations and limited liability companies. Any obligations incurred pursuant to this section shall be payable solely from charges, rents or payments derived from the existing facilities and the facilities or projects financed thereby and shall not be secured by the full faith and credit or the taxing power of the county, hospital taxing district, the state, or any other political subdivision; and provided further, that any county or public hospital taxing district contracting such indebtedness shall own its just proportion to the whole amount so invested. The authority granted by this section shall be exercised for the delivery of health care and related service and with the prior approval of the governing body of the county, hospital district or other governing body of a public hospital. No provisions of this Constitution

including, but not limited to Sections 3 and 4 of Article VIII, and Section 4 of Article XII, shall be construed as a limitation upon the authority granted under this section."

This section was amended by S.L. 2010, H.J.R. No. 4 and ratified at the November, 2010, general election to read as it now appears.

§ 3D. Municipal electric systems — Authorized indebtedness. — Notwithstanding the limitations and requirements of Section 3, Article VIII, of the Constitution of the State of Idaho, any city owning a municipal electric system may:

(a) acquire, construct, install and equip electric generating, transmission and distribution facilities for the purpose of supplying electricity to customers located within the service area of each system established by law and for the purpose of paying the cost thereof, may issue revenue bonds with the assent of a majority of the qualified electors voting at an election held as provided by law; and

(b) incur indebtedness or liability under agreements to purchase, share, exchange or transmit wholesale electricity for the use and benefit of customers located within such service area;

provided that any revenue bonds, indebtedness or liability shall be payable solely from the rates, charges or revenues derived from the municipal electric system and shall not be secured by the full faith and credit or the taxing power of the city, the state or any political subdivision.

Compiler's Notes. This section was proposed as an amendment to the Idaho Constitution by S.L. 2010, House Joint Resolution No. 7, and was adopted by the electorate at the November, 2010, general election.

§ 3E. Airports and air navigation facilities — Airport related projects — Revenue and special facility bond financing. — Political subdivisions of the state and regional airport authorities as defined by law, if operating an airport, may acquire, construct, install, and equip land, facilities, buildings, projects or other property, which are hereby deemed to be for a public purpose, to be financed for, or to be leased, sold or otherwise disposed of to persons, associations or corporations, or to be held by the subdivision or regional airport authority, and may in the manner prescribed by law issue revenue and special facility bonds to finance the costs thereof; provided that any such bonds shall be payable solely from fees, charges, rents, payments, grants, or any other revenues derived from the airport or any of its facilities, structures, systems, or projects, or from any land, facilities, buildings, projects or other property financed by such bonds, and shall not be secured by the full faith and credit or the taxing power of the subdivision or regional airport authority. No provision of this constitution including, but not limited to, sections 3 and 4 of article VIII and section 4 of article XII, shall be construed as a limitation upon the authority granted under this section.

Compiler's Notes. This section was proposed as an amendment to the Idaho Constitution by S.L. 2010, House Joint Resolution No. 5, and was adopted by the electorate at the November, 2010, general election.

§ 4. County, etc., not to loan or give its credit.

ANALYSIS

Notice of tort claim required.
Redevelopment agencies.

Notice of Tort Claim Required.

Bail bond company's claim under this section, challenging a sheriff's acceptance of bail bond payments by credit card, which the company equated to a cause of action for tortious interference with a business relationship, sounded in tort and was dismissed for lack of timely notice of the claim under § 6-908. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

Redevelopment Agencies.

Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho Const., art. VIII, § 3 or this section, because the agencies were not the alter egos of cities. Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).

Collateral References. State or local governmental body's action or inaction, in provision of public utility services, benefiting private company as constituting gift of money, or pledge of credit, to private party in violation of state constitutional provision. 122 A.L.R.5th 337.

Article IX

EDUCATION AND SCHOOL LANDS

SECTION.
10. State University — Location, regents, tuition, fees and lands.

§ 1. Legislature to establish system of free schools.

Cited in: Idaho Schs. for Equal Educ. Opportunity v. State, 140 Idaho 586, 97 P.3d 453 (2004); State v. District Court, 143 Idaho 695, 152 P.3d 566 (2007).

Duty of Legislature.

District court did not err in finding that the state acted unconstitutionally by failing to provide a safe environment for public school students that would be conducive to learning. Although the state legislature had undertaken some measures, which were commended, these measure did make the controversy moot. Idaho Schs. for Equal Educ. Opportunity v. State, 142 Idaho 450, 129 P.3d 1199 (2005).

§ 6. Religious test and teaching in school prohibited.

Religious Texts.

State education officials were reasonable in their belief that their banning religious texts from public school curriculum was lawful in light of §§ 33-118 and 33-118A, this section, and a legal opinion from a deputy in the attorney general's office upon which they acted. Nampa Classical Acad. v. Goesling, 714 F. Supp. 2d 1029 (D. Idaho 2010).

§ 10. State University — Location, regents, tuition, fees and lands. — The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. The regents may impose rates of tuition and fees on all students enrolled in the university as authorized by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to

exceed one hundred and sixty acres, to any one person, company or corporation.

Compiler's Notes. As originally adopted, this section provided as follows: "**State University — Location, regents, and lands.** — The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation."

This section was amended by S.L. 2009, Senate Joint Resolution No. 101 and ratified at the November, 2010, general election to read as it now appears.

Article X

PUBLIC INSTITUTIONS

SECTION.
5. State prisons — Control over. [Proposed amendment — See note.]

§ 5. State prisons — Control over. [Proposed amendment — See note.] —

The state legislature shall establish a nonpartisan board to be known as the state board of correction, and to consist of three (3) members appointed by the governor, one (1) member for two (2) years, one (1) member for four (4) years, and one (1) member for six (6) years. After the appointment of the first board the term of each member appointed shall be six (6) years. This board shall have the control, direction and management of the penitentiaries of the state, their employees and properties, and of adult probation and parole, with such compensation, powers, and duties as may be prescribed by law.

Proposed Amendment. An amendment to this section was proposed by S.L. 2012, Senate Joint Resolution No. 102, to be submitted to the electors of the state at the next general election (November 2012).

The proposed amendment reads: "**Section 5. State prisons — Control over.** The state legislature shall establish a nonpartisan board to be known as the state board of correction, and to consist of three (3) members appointed by the governor, one (1) member for two (2) years, one (1) member for four (4) years, and one (1) member for six (6) years. After the appointment of the first board the term of each member appointed shall be six (6) years. This board shall have the control, direction and management of the penitentiaries of the state, their employees and properties, and of adult felony probation and parole, with such compensation, powers, and duties as may be prescribed by law."

Article XI

CORPORATIONS, PUBLIC AND PRIVATE

§ 17. Liability of stockholders — Dues.

Collateral References. Validity of warrantless search of other than motor vehicle or occupant of vehicle based on odor of marijuana — State cases. 122 A.L.R.5th 439.

Article XII

CORPORATIONS, MUNICIPAL

§ 1. General laws for cities and towns.

Construction.

Rational basis exists for the grant of immunity in § 72-223, even if the statutory employer has not had to pay benefits because the direct employer has. Kolar v. Cassia County Idaho, 142 Idaho 346, 127 P.3d 962 (2005).

§ 2. Local police regulations authorized.

Cited in: Potts Constr. Co. v. N. Kootenai Water Dist., 141 Idaho 678, 116 P.3d 8 (2005); Boudreau v. City of Wendell, 147 Idaho 609, 213 P.3d 394 (2009); KGF Dev., LLC v. City of Ketchum, 149 Idaho 524, 236 P.3d 1284 (2010); In re City of Shelley, 151 Idaho 289, 255 P.3d 1175 (2011).

ANALYSIS

County regulations.
Fee vs. tax.
Municipal ordinances.
Zoning ordinances.

County Regulations.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court of Idaho held that Ordinance 90 did not violate this section. While § 42-101 provides that control over the appropriation of water is vested in the state, regulation of water quality by local government is not preempted; because of Idaho's diverse geographical settings, water regulation at CAFOs does not call for a uniform regulatory scheme. Idaho Dairymen's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

Fee vs. Tax.

Because a city's stormwater charge served the non-regulatory purpose of raising revenue for cleaning, maintaining, and expanding the city's streets and stormwater infrastructure, it was not a fee incidental to regulation and enacted pursuant to the city's police powers under this section. Rather, it was an unlawful revenue-generating tax, lacking legislative authorization under Idaho Const., Art. VII, § 6, and its imposition on governmental entities was barred by Idaho Const., Art. VII, § 4. Lewiston Indep. Sch. Dist. #1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).

Municipal Ordinances.

This provision applies to both cities and counties, and to the extent that the Kuna City, Idaho, Code may be interpreted as purporting to authorize judicial review under the Administrative Procedures Act, it conflicts with the general laws of the State. Black Labrador Investing, LLC v. Kuna City Council, 147 Idaho 92, 205 P.3d 1228 (2009).

Where defendant minor was cited for violating Wendell City, Idaho, Ordinance No. 442, a curfew ordinance which prohibited a minor from being in public from 11:00 p.m. till 5:00 a.m., the supreme court of Idaho held that the ordinance was a reasonable time, place, and manner restriction with only an incidental effect on First Amendment freedoms; the ordinance was a valid enactment within the city's power under this section, served the government's interest in keeping juveniles off the streets, and did not reach an amount of conduct that was greater than necessary to further the city's interests in the physical well-being of minors. State v. Doe, 148 Idaho 919, 231 P.3d 1016 (2010).

Zoning Ordinances.

Bingham County, Zoning Ordinance § 17.7 was not applicable when the recommendation of a planning and zoning commission on a rezoning application was to amend the zoning ordinance. Applying § 17.7 in a situation in which the planning and zoning commission had recommended approval of a rezoning application, but the application had been denied by the board of county commissioners on the ground that they were split on the issue, would, in essence, delegate to the planning and zoning commission the authority to amend the zoning ordinance in violation of this section and §§ 67-6504 and 67-6511. Brower v. Bingham County Commissioners (In re Zoning Change), 140 Idaho 512, 96 P.3d 613 (2004).

Board of county commissioners acted within its authority under §§ 67-6509, 67-6511, and 67-6535(3) and this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 254 P.3d 24 (2011).

Opinions of Attorney General. Because the legislature has authorized both the coun-

ties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

No authority exists for a city to appoint the employees of a private company to serve as "peace officers." OAG 08-02.

Article XV

WATER RIGHTS

§ 3. Water of natural stream — Right to appropriate — State's regulatory power — Priorities.

ANALYSIS

Administrative Rules.

—Constitutionality.

To the extent that the district court engaged in an "as applied" analysis of the Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules), it was in error, as administrative remedies had not been exhausted. Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 143 Idaho 862, 154 P.3d 433 (2007).

As the Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules) specifically incorporated Idaho law, the failure to recite certain burdens and evidentiary standards, set specific timelines and set objective standards did not make them facially unconstitutional. The CM Rules also survive a facial challenge in the recognition given to partial decrees and in the treatment of carryover water. Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 143 Idaho 862, 154 P.3d 433 (2007).

Preferential Rights to Water.

Because the senior appropriators had acquired water rights, they had property rights under § 55-101 that could not be taken from them for public or private use, except by due process of law. When there was insufficient water to satisfy both the senior appropriators' and the junior appropriators' water rights, giving the junior appropriators a preference to the use of the water would constitute a taking for which compensation was required under this section. Clear Springs Foods, Inc. v. Spackman, 150 Idaho 790, 252 P.3d 71 (2011).

Stock Watering.

Trial court properly determined that United States had not asserted its water rights under the constitutional method of appropriation because, under that method, the United States, as the claimant, was required to put the water to beneficial use, which it had failed to do. On the other hand, a livestock company had established its water rights because the company's predecessors had put the water to beneficial use by watering their stock; no diversion was needed under the constitutional method. Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), 144 Idaho 1, 156 P.3d 502, cert. denied, 552 U.S. 990, 128 S. Ct. 487, 169 L. Ed. 2d 339 (2007).

§ 4. Continuing rights to water guaranteed.

ANALYSIS

Beneficial Use.

Entity that applies the water to beneficial use has a right that is more than a contractual right. United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

Irrigation Districts.

Where the United States Bureau of Reclamation (BOR) filed water right claims against irrigation entities regarding projects developed pursuant to the Reclamation Act of 1902, any rights held by BOR were subject to rights of the beneficial users that were served by the irrigation districts because, inter alia, (1) federal law deferred to state law in determining the rights to water in the reclamation projects, (2) the beneficial users had an interest that was stronger than mere contractual expectancy, and (3) title to the use of the water was held by the consumers or users of the water. United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957), 144 Idaho 106, 157 P.3d 600 (2007).

Whenever water is appropriated by any person or corporation for use in agricultural purposes under a sale, rental or distribution, it shall never be diverted from that use and purpose, so long as there may be any demand for the water and to the extent of such demand for agricultural purposes. Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

§ 5. Priorities and limitations on use.

Irrigation Districts.

Whenever water is appropriated by any person or corporation for use in agricultural purposes under a sale, rental or distribution, it shall never be diverted from that use and purpose, so long as there may be any demand for the water and to the extent of such demand for agricultural purposes. Viking Constr., Inc. v. Hayden Lake Irrigation Dist., 149 Idaho 187, 233 P.3d 118 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Article XVIII

COUNTY ORGANIZATION

§ 6. County officers.

Commissioners.

County commissioners' supervisory authority under § 31-802 to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners were not empowered to direct the sheriff's conduct regarding bail, which was a matter within the sheriff's authority. Allied Bail Bonds, Inc. v. County of Kootenai, 151 Idaho 405, 258 P.3d 340 (2011).

PARALLEL REFERENCE TABLES

Am § NE = amendment of section not enacted
Appn. = appropriation
App./S. = Application of other code section
ch. or c. = chapter
Const. = constitutionality
Eff. = effective date
Emer. = emergency
EE = emergency and effective date
(E. S.) = extra session
Exp. = Expiration
Hist. D = Historical Documents
Init. Meas. = Initiative measure
Leg. = legalizing act
Legis. Int. = Legislative Intent
n. = note
PR = partial repeal
p. = page
Ref. = referendum
Ren. = renumbered
R = repealed
Rplg. = repealing
Sav. Cl. = saving clause
Sep. = separability
Sev. = severability
Spec. = special act or section
S. = Superseded
Temp. = temporary
Unconst. = Unconstitutional
Val. = Validation
Veto = Vetoed

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	2	Emer.
3	1	Appn.
	2	Emer.
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